# CONTRACT FOR CONSTRUCTION SERVICES WITH GUARANTEED MAXIMUM PRICE 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 NAME:**

**ARCHITECT/ENGINEER NAME AND ADDRESS:**

**PROJECT LOCATION:**

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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 tasks associated in **Exhibit A.**

***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"). The Contract Sum shall not exceed the Guaranteed Maximum Price ("GMP") of _____ ($ ) inclusive of Contractor's fixed fee in the amount of _____ ($ ), and Allowances up to _____ ($ ) as detailed in **Exhibit C**, **Exhibit D**, **Exhibit E**, subject to any increase or decrease in Price as provided in the Terms and Conditions of this Contract. Costs which would cause the GMP to be exceeded shall be paid by Contractor without reimbursement by Owner.

2. Notwithstanding anything to the contrary contained in the Contract, Owner may withhold any payment to Contractor hereunder for the Work of Contractor or for the Work of any Subcontractor or Sub-subcontractor if and for so long as such party is in material breach of any of its obligations hereunder for the Work of Contractor or under a subcontract, as the case may be, or otherwise is in default under the Contract; provided, however, that any such holdback shall be limited to an amount sufficient, in the reasonable opinion of Owner, to cure any such fault or failure of performance by Contractor or by such Subcontractor or Sub-subcontractor, as the case may be, together with any administrative costs and expenses resulting therefrom.

3. Under no circumstance may the Contract Sum, including both Contractor's fee and Cost of the Work, exceed the GMP, subject to adjustments in accordance with the Contract.

***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 date of the last signature of this Contract, unless Owner issues a Notice to Proceed, in which the date of commencement of the Work shall be stated therein.

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

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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 and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract or a Notice to Proceed given by Owner, Contractor shall notify Owner in writing not less than five (5) days or other agreed period before commencing the Work.

4. If Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of Owner or 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 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 Engineer, subject to Owner's approval, determines may justify delay, then provided that Contractor is in compliance with Article 15 hereof, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence as determined by 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 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.

5. 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:

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| EXHIBITS | |
|---|---|
| DESCRIPTION | ATTACHED |
| Exhibit A – Construction Narrative - Scope of Work Summary | |
| Exhibit B – Project Schedule | |
| Exhibit C – GMP Schedule of Values | |
| Exhibit D – Fixed Prices Contained in GMP | |
| Exhibit E - Allowance Items and Amounts | |
| Exhibit F - Certificate of Insurance | |
| Exhibit G – Contractor Clarifications | |
| Exhibit H - Organizational Chart | |
| Exhibit I - Contractor Equipment and Labor Rates | |
| Exhibit J – Subcontractor List | |
| Exhibit K – Tax Exempt Materials Itemization | |
| Exhibit L – Proposed Sample Agreement Exceptions | |
| Exhibit M – Licenses/Registrations | |
| Exhibit N - Bonds | |
| ATTACHMENTS (attached and incorporated by reference) | |
| DESCRIPTION | ATTACHED |
| Attachment A - Drawings, Specifications, and/or other information reviewed by Contractor | |
| Attachment B - Monthly Report Outline | |
| Attachment C - Request for Project Change (RPC) Form | |

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

This Contract contains multiple 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.

| **TRIBE:**<br>SEMINOLE TRIBE OF FLORIDA | | **CONTRACTOR:**<br>_____ | |
|---|---|---|---|
| By: | _____ | By: | _____ |
| Name: | Marcellus W. Osceola, Jr. | Name: | _____ |
| Title: | Chairman | Title: | _____ |
| Date: | _____ | Date: | _____ |

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# PART II OF CONTRACT FOR CONSTRUCTION SERVICES WITH GUARANTEED MAXIMUM PRICE BETWEEN OWNER AND CONTRACTOR

## PART II OF CONTRACT: TERMS AND CONDITIONS

## DEFINITIONS

**"Contract"** shall mean 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 the Engineer and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Engineer or (4) between any persons or entities other than the Owner and Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

**"Contract Documents"** shall mean 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 Request for Project Change, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the 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).

**"Contractor"** shall mean 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.

**"Design Documents"** for the Project are set forth in the Attachments subject to any Contractor Clarifications stated in **Exhibit G.**

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

**"Engineer"** shall mean the architect or engineer of record selected by Owner.

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

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

**"Project Site"** shall mean the entire site where Work is to be performed.

**"Related Party"** shall mean an entity that provides labor, services or materials to the Project and is controlled (in whole or in part) by one or more principals who manage or own an interest in Contractor, directly or indirectly; as used herein, "principal" includes not only corporate ownership, partnerships and

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joint ventures, but also familial ties including, but not limited to, spouses, siblings of spouses, grandparents, parents, step parents, siblings, uncles, aunts, nieces and nephews of such principal.

**"Specifications"** shall mean 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.

**"Subcontractor"** shall mean a person or entity who has a direct contract with Contractor to perform a portion of the Work at the Project 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 prime contractor or Subcontractors of a separate prime contractor.

**"Sub-subcontractor"** shall mean a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project 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.

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

**"Change Order"** shall mean a written instrument prepared by Owner and signed by Owner and Contractor, stating their agreement upon all of the following:

(a) A Change in the Work;

(b) The amount of the adjustment, if any, in the Contract Sum; and

(c) The extent of the adjustment, if any, in the Contract Time.

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

## SECTION A. SPECIAL TERMS AND CONDITIONS

### ***ARTICLE 1***
### CONTRACTOR'S SERVICES AND RESPONSIBILITIES

**§1.1** Contractor shall perform and complete for Owner all the Work required by, and in conformity with, the Contract Documents. Variation from Contract Documents may not occur without Owner approval in writing. The Work shall be performed and completed within the "Completion Dates" specified herein and within the Guaranteed Maximum Price, as they/it may be adjusted in accordance with this Contract.

**§1.1.1** Contractor represents and warrants that:

a) It is and will remain fully qualified and able to cause the Work to be accomplished in a

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manner consistent with good trade practices and within the time and in the manner specified in the Contract Documents and has and will continue to have sufficient and qualified personnel to fulfill its duties under this Contract in the manner required;

b) It has and will continue to have all licenses and permits as a Florida state licensed contractor and by any other government agency or authority having jurisdiction of the Project Site and/or the Project;

c) It is and will continue to be financially capable and has and will continue to have sufficient financial resources to fulfill its duties under this Contract in the manner required, including the ability to obtain any bonds required by the Contract Documents;

d) It has undertaken a prudent and professional investigation of the Project and Project Site as a contractor, not as a designer, and is familiar with the conditions of Project Site; and has carefully considered all subsurface information furnished by Owner;

e) It has not made and will not in the future make any payments, agreement, or arrangement for the payment of any commission, percentage, brokerage fee or other compensation to any person in connection with the procuring or soliciting of this Contact or for services as a broker or finder in connection with the transactions contemplated hereby;

f) It will not commit its personnel to, or engage in, any other projects during the term of this Contract such that other projects may materially and adversely affect the quality or efficiency of the Work required to be performed by Contractor in connection with this Project or which will otherwise be detrimental to the performance and completion of this Project.

g) Contractor agrees to act in good faith and fair dealing between it and Owner by this Contract. Contractor shall use its best efforts and shall furnish commercially reasonable skill and judgment and shall cooperate with Owner, Engineer, and Owner's other consultants in furthering the best interests of Owner. Contractor shall furnish efficient business administration, coordination, supervision, and management, in the most expeditious, economical, and soundest manner possible, consistent with the best industry accepted standards and the best interests of OWNER, and in accordance with the Contract Documents.

h) Contractor warrants that it has examined, and will continue to examine, the Project and Project Site, all areas where Work is to be performed, and the surrounding areas. Contractor has compared, and will continue to compare, its finding with the Contract Documents. Contractor will inform itself to the best of its ability based on its prudent and professional investigation as a contractor as to all matters necessary for carrying out the Work; including, but not limited to, general working conditions, labor requirements, accessibility, condition of the premises, obstructions, drainage conditions, actual elevations, excavating and filling. Contractor has undertaken such investigation as to the character of the Project Site and the character of existing structures at or adjacent to the Project Site, and the character and extent of Owner's and other contractors' operations in the area, and in connection with the Project. No allowance or extra payment will be subsequently made because of any items or conditions occasioned by Contractor's failure to make such comparison and examination, or by reason of any error or oversight on Contractor's part which was not reasonably discoverable in such examination or otherwise related.

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**§1.2 SERVICES DURING PRECONSTRUCTION AND BUDGETING PHASE**
**§1.2.1** Contractor shall:

a) Provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. With Engineer's assistance, prepare preliminary estimates of Construction Cost for early schematic designs based on area, volume, Subcontractor quotes, and/or other industry standard information. Assist Owner and Engineer in achieving mutually agreed upon program and the Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems. Contractor and Subcontractor cost estimates should include detailed quantity and unit prices to allow for cost analysis.

b) Review designs as a contractor and not as a design professional, including but not limited to the designs, structural, HVAC, plumbing, fire protection, power and lighting, security systems, communications, interior designs, and vertical transportation for constructability in accordance with the Project Budget and Program requirements. Advise on the Project Site use and improvements, selection of materials, Project and Project Site systems and equipment, improvements to the Project and Project Site, call and security systems, and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, integration into existing Project and Project Site systems, and factors related to cost including, but not limited to, costs of alternative designs or materials (value engineering), preliminary budgets and possible economics.

c) Perform prudent investigations, evaluations and/or appraisals of existing Project Site conditions, including requests for Owner furnished soils investigation. Contractor acknowledges that it has previously investigated the existing conditions in connection with the determination of the Project scope and is therefore substantially familiar with the condition of the Project and Project Site. Contractor has made, and will continue to make, such investigation as it believes is necessary and appropriate during this stage to have a full and satisfactory knowledge of existing conditions of the Project, Project Site, and all related Work as a prudent contractor.

d) Provide for Engineer's and Owner's review and acceptance of a written Project schedule, and monthly (or as otherwise required by Owner) update, which is consistent with the approved Contract Schedule to coordinate and integrate Contractor's Work, the services of Consultants, and Owner's responsibilities with anticipated construction schedules showing key milestones for the completion of the Project (the "Project Schedule").

e) Advise Owner in writing within 72 hours upon discovery if, in the judgment of Contractor, the issuance of architectural or engineering documents does not meet Project Schedule requirements; or if the information provided on such documents is inadequate for the current purposes intended; or if requirements of such documents conflict with other documents issued, or with existing conditions on the Project Site. Contractor will seek clarification of any such condition at the next scheduled Project Meeting from Owner and Engineer.

f) Prepare for Owner's approval a more detailed, line-item by area written estimate of Construction Cost developed by using estimation techniques which anticipate the various elements of the Project; and based on schematic design documents prepared by Engineer. Update and refine this estimate periodically as Engineer prepare the design development and Construction Documents. Promptly advise Owner and Engineer if it appears that the Construction Cost may exceed the Contract Sum and make recommendation for corrective action.

g) Review (without thereby assuming Engineer's responsibility for design errors and omissions) the

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Contract Documents, as the same are being prepared and check the same for (a) obvious conflicts, discrepancies, and omissions, and (b) variations from customary construction practices and methods which, in the opinion of Contractor, may cause difficulties or occasion delay in the performance of the Work and advise Owner and Engineer promptly, in writing, of any such observed problems. Coordinate Contract Documents by consulting with Owner and Engineer regarding Drawings and Specifications as they are being prepared and recommend alternative solutions whenever design details adversely affect construction feasibility, cost, or schedule. Advise Owner, using Contractor's skill and judgment, regarding any missing or incomplete aspects of the Project scope.

h) Prepare and supervise the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials, and services for common use of Subcontractors. Verify that the requirements and assignment of responsibilities are included in all subcontracts. Contractor shall be solely responsible to Owner for the safety of areas in which Work is performed – both on-site and off-site.

i) Determine the separation of the Project into Subcontracts for various categories of Work. Advise on the method to be used for selecting Subcontractors and awarding subcontracts. Involve Owner in Subcontractor selection as described in j) and 2.2.2 below. As separate Subcontracts are awarded, insure that (a) the Work of the separate Subcontractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate separate Subcontractors, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction.

j) Develop a Project "Construction Schedule" including Owner provided items and Owner provided third party activities, providing for all major elements of construction, including times of commencement and completion required of each separate Subcontractor/element of work that is consistent with the Contract Completion Date and Project Schedule attached as **Exhibit B** to the Contract.

k) Investigate and recommend a schedule for purchase of materials and equipment requiring long lead time procurement and coordinate the schedule with the early preparation of portions of the Contract Documents by Engineer. With Owner's prior prequalification of Subcontractors and written approval, competitively bid and order such materials and equipment. Owner shall receive a copy of all bids. Expedite and coordinate delivery of these purchases. Contractor remains responsible for the delivery, installation, and warranty of Owner purchased materials.

l) Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. Take all appropriate actions to minimize adverse effects of available labor market (shortages).

**§1.2.2** With Engineer's assistance, receive Subcontractor bids (the "Bids") from Subcontractor's pre-qualified by Owner and Contractor, prepare bid analyses and make recommendations to Owner for award of Subcontracts or rejection of bids. There shall be a time for a formal Subcontractor bid opening(s) at which Owner may choose to be present. Subcontractor bids shall be lump sum. Subcontracts shall not be on a cost-plus basis. Copies of all Subcontractor bids shall be furnished to Owner at that time. Contractor shall solicit a minimum of three (3) Bids in each of the major Subcontract categories unless waived by Owner. For informational purposes only Contractor shall provide a bid analysis to Owner.

**§1.2.3** With Engineer's and Owner's assistance and participation, conduct pre-award conferences with successful sub bidders. Prepare construction Subcontracts and advise Owner on the acceptability of Subcontractors and materials proposed by Subcontractors. Advise Owner of (a) all "Alternates,"

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"Qualifications" and "Exclusions" contained in any Subcontract and (b) give Owner sufficient notice of the need to determine which alternative is to be exercised so that such decision can be made in a timely fashion (that is, so as not to hinder the Construction Schedule or coordination of trades). Without prejudice to Owner, Owner shall have the right to reject any proposed Subcontractor who is not pre-qualified. If Owner rejects the lowest responsive Bid from a pre-qualified bidder, the GMP will be increased by the difference between that bid and the accepted bid. All proposed Related Party transactions shall be expressly identified by Contractor, actual costs with full receipt and source document evidence shall be provided to Owner and a mark-up on such portion of the Work performed by a Related Party shall not exceed ten percent (10%) of the direct cost for overhead and five percent (5%) of the direct cost for profit, and Contractor's Fee shall not be increased by more than five percent (5%) for overhead and profit collectively. In the event a Related Party is not identified on the Subcontractor List (**Exhibit J** to this Contract) or, if such Related Party is employed after the Contract is executed, then in a Change Order, there shall be no mark-up of any invoices submitted by Contractor for payment pertaining to the work or services provided by the Related Party and Owner shall only be liable for the actual cost incurred by the Related Party.

**§1.3 SERVICES DURING CONSTRUCTION PHASE**

**§1.3.1** Contractor shall provide administration of the Subcontracts as set forth below and in the General Conditions.

**§1.3.2** If not already done, Contractor will obtain bids from subcontractors that are pre-qualified by OWNER as described in Section 1.2.2 above.

**§1.3.3** Contractor shall have overall responsibility to perform all the Work in accordance with the Contract Documents. Contractor shall be responsible for all aspects of the Work of the Subcontractors including the means, methods and sequences of Contractor's and Subcontractor's Work.

**§1.3.4** Without limiting the responsibilities of Contractor in connection with its obligations under this Contract, Contractor shall be responsible to Owner for the acts and omissions of (a) its agents and employees; (b) Subcontractors performing Work under a contract directly with Contractor; and (c) agents, employees, and Sub-subcontractors of every tier of Subcontractors under (b) above. Contractor shall insure strict compliance by its employees, agents, Subcontractors, and their employees, agents and Sub-subcontractors with all rules and regulations that have been delivered to Contractor by Owner.

**§1.3.5** Proposed subcontracts and purchase orders in excess of Five Hundred Thousand Dollars ($500,000.00) shall be approved by Owner prior to being awarded by Contractor. Contractor will notify Owner, at least seventy-two (72) hours in advance if a lack of response by Owner could cause a negative impact on the Project Schedule. Provided Owner responds within such seventy-two (72) hour period, no extension of time shall be granted. Prior to submitting any Subcontract for Owner's approval, Contractor shall investigate through such means as are standard in the construction industry the financial capability of the Subcontractor and other material information about subcontractors and advise Owner as to the desirability and cost of obtaining payment and performance bonds from such Subcontractor; or alternatively providing Subcontractor default insurance. Owner may decline, in its sole discretion, to approve a proposed Subcontractor because of such information or for any other reason. All major Subcontractors, as determined by Owner, may be required to provide surety payment and performance bonds, or be covered by Subcontractor default insurance, with the cost of these bonds or insurance to be included as part of the cost of the work. These bonding or insurance requirements may be waived with the consent of both Contractor and Owner. Contractor shall not allow any Subcontractor to enter the Project Site to perform work prior to executing an approved Subcontract and delivering to Owner evidence of the insurance required herein, provided, however, that an executed Subcontract shall not be required of a Subcontractor prior to entering the Project Site if Contractor has obtained each of the following: (a) proof of the insurance required hereby;

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(b) a fully executed letter of intent between Contractor and the Subcontractor; and (c) Owner's written approval to Contractor's "Analysis of Award" relating to the Subcontract. In such event, Contractor shall enter into a written Subcontract within thirty (30) calendar days thereafter.

**§1.4 CONTRACTOR CONSTRUCTION SUPPORT ACTIVITIES**

**§1.4.1** General conditions support activities including management, scheduling, protection, minor demolition, patching and repair work, daily maintenance of the Project Site including daily clean-up and removal of debris resulting from Contractor's and any Subcontractors' activities, safety and security, temporary utilities, sanitary facilities, and Project Site surveys.

**§1.4.2** Maintain a competent experienced full-time staff (the "Project Staff") at the Project Site (or at Contractor's home office, only if and to the extent approved by Owner) and a fully equipped field office. Key Project Staff shall be as listed in **Exhibit H** hereto, who shall supervise, manage, coordinate, direct, monitor, review and inspect the Work and the progress of the Subcontractors on the Project. The parties acknowledge that third party inspection companies, some of which will be Subcontractors of Contractor and some of which may be engaged directly by Owner, may carry out inspection of certain elements of the Work. Such inspections shall not relieve Contractor of any of its duties or obligations pursuant to this Contract.

**§1.4.3** Contractor shall provide temporary offices for Owner in accordance with the Design Specifications.

**§1.4.4** Equip and maintain the Project field office with telephone, highest available speed internet service, photocopy machine, plan table, plan racks, a computer station for each member of the Project Staff, Owner, and its agents, to access Subcontract accounting information, submittal logs, etc.; and such other equipment as is approved by Owner and in accordance with the Design Specifications.

**§1.4.5** All Project accounting functions shall be performed at either the Project Site or Contractor's other office locations as approved by Owner.

**§1.4.6** The key personnel indicated in **Exhibit H** attached hereto shall be assigned by Contractor to the Project. The foregoing persons shall be available to the Project as required by Owner and Owner's time, cost, quality, and other objectives, as necessitated by problems and as appropriate for sound construction practice in accordance with the standards and duties established by this Contract. The foregoing persons shall, except as otherwise indicated on such exhibit, be employed full time at the Project Site unless otherwise approved by Owner. Owner retains the right, in its reasonable discretion and with or without cause, to direct the removal from further Work on the Project or the Project Site any employee of Contractor within twenty-four (24) hours.

**§1.4.7** Changes in the Project Management Staff during the term of the Project shall be subject to written approval by Owner. It is agreed that key personnel shall not be removed from site/project without prior written approval of Owner unless such removal is result of person's departure from company.

**§1.4.8** Provide administrative, management and related services as required to coordinate the Work of the Subcontractors with each other and with the activities and responsibilities of Contractor, Owner, and Engineer, to complete the Project in accordance with Owner's objectives for cost, time, and quality. Provide sufficient organization, personnel, and management to carry out the requirements of this Contract. On a timely basis, advise the Subcontractors as to priorities and maintain diligent follow-up to avoid all problematic delivery, installation, or other delays. Establish, and coordinate with Owner (and, if requested by Owner, with Engineer and Owner's consultants), a system for processing, expediting, and administering all Subcontractors and the purchase of materials, supplies, and equipment. Monitor the procurement and delivery of critical materials to the Project and coordinate the deliveries with the progress of the Work to

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ensure that such materials are available when required. Arrange for storage of such materials if necessary. Maintain an up-do-date expediting and procurement status log at all times and furnish copies of same to Owner periodically as requested.

**§1.4.9** Schedule and conduct pre-construction and construction progress meetings to discuss such matters as: procedures, progress, problems, and scheduling. Prepare and promptly distribute minutes. Attend all other meetings upon request by Owner or as required for the expeditious progress of the Work (consistent with Owner's time, cost, quality, and other objectives) with Engineer, Owner, Consultants, and others.

**§1.4.10** The Project Schedule attached as **Exhibit B** is a part of this Contract. Based on the Construction Schedule which may be periodically updated by Contractor and approved by Owner in the pre-construction phase, Contractor shall prepare within thirty (30) calendar days prior to the commencement of the Construction Phase a Project Schedule which shall be formally submitted to Owner for approval. Absent Owner's express written consent to some other form, the Project Schedule, the Construction Schedule, and all updates thereof, shall be in critical path method form and shall be presented in a computer-generated chart form as well.

**§1.4.11** Consistent with the Project Construction Schedule issued with the Bidding Documents and utilizing the scheduling information provided by the separate Subcontractors, update the Approved Project Schedule in P6 format incorporating the activities of Subcontractors on the Project, including activity sequences and duration, allocation of costs, labor, and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. Include Owner's occupancy requirements showing portions of the Project having occupancy priority. Update and reissue the Project Construction Schedule in P6 format used for bidding purposes as required to show current conditions and revisions required by actual experience and to make it compatible with the Approved Project Schedule. All schedules shall be coordinated with delivery dates required by tenant leases, as applicable.

**§1.4.12** Contractor shall monitor the progress of the Work using the Project Schedule and Approved Construction Schedule shall report to Owner any schedule deviations with reference to the Project Schedule. Construction Schedule updates shall be formally presented to Owner no less than once per month and shall include the status of work of each Subcontractor, supplier, and vendor. Owner's receipt and approval of an updated Approved Construction Schedule shall not constitute notice of a delay, approval of a time extension (should the updated schedule reflect a later completion date than earlier schedules), or an agreement by Owner to pay any delay or acceleration costs. The completion dates required by the Contract can only be revised by an approved, fully-executed Change Order. Failure to provide the schedule update shall be cause not to process subsequent pay requisitions. At the request of Owner, Contractor shall provide schedules detailed by material, shop drawings, submittals, and mock-ups.

**§1.4.13** Provide monthly monitoring of the GMP in a format consistent with **Exhibit C** attached hereto and incorporated by reference herein and provide monthly reports to Owner showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and immediately advise Owner and Engineer whenever projected costs have the potential to exceed budgets or estimates. No requisition of payment will be processed unless accompanied by an updated monthly report.

**§1.4.14** Maintain cost accounting records on authorized Work performed and provide a monthly report on cost accounting on electronic media and in appropriate written form.

**§1.4.15** Upon the award of the initial Subcontracts, within thirty (30) calendar days of the commencement of the Construction Phase, and prior to the issuance of the first "Application for Payment" of the

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Construction Phase, Contractor shall adjust the GMP Schedule of Values attached as **Exhibit C** to reflect the actual individual schedules of values for each Subcontract issued at that time. The Schedule of Values should be updated for each subsequent Application for Payment to reflect current values for each Subcontract. Contractor will provide a summary of such values within the Guaranteed Maximum Price and indicate whether total projected cost is below the GMP. When a subcontract is issued and the amount of the subcontract is below the initial estimated cost, the excess amount shall be added to the Contingency. Similarly, when a subcontract is issued and the amount of the subcontract is greater than the initial estimated cost, the deficient amount may be taken from the contingency and shall not be cause to increase the GMP.

**§1.4.16** To the extent any Subcontractor at the time of an initial award of a subcontract advises that a Change Order is necessary, Contractor shall immediately notify Owner in writing as follows: (a) submit an RPC and (b) give a recommendation as to the necessity of such Change Order (including its possible effect on the price, schedule and quality) and the best way to resolve or implement the change; provided, however, Contractor shall have a reasonable period, not to exceed ten (10) calendar days after notifying Owner of the need for a Change Order, to provide an estimate of the cost thereof and, thereafter, up to an additional ten (10) calendar days within which to provide Owner with final detailed costs to implement the Change Order. Contractor may request, on behalf of the applicable Subcontractor, that Owner provide Contractor with up to an additional ten (10) calendar days to provide the final detailed costs; however, Owner shall not be obligated to grant such request or may grant less than an additional ten (10) calendar days if such additional time may cause an impact to the Project Schedule. In the event the final detailed costs are not timely submitted (i.e., within the initial ten (10) calendar days and any additional time granted by Owner), Contractor shall inform applicable Subcontractor that failure to provide such detailed cost in a timely manner may limit reimbursement from Owner to the amount of Contractor's initial estimate. In submitting any such Request for Project Change, Contractor shall utilize the "Request for Project Change" form which appears as **Attachment C** attached hereto and incorporated by reference herein. The responsibilities and procedures to be followed in connection with Change Orders are set forth in greater detail in Article 27. All Change Orders require the prior written consent of Owner. Owner may direct Contractor to perform Work as not to impede the Construction Schedule. Owner and Contractor will review disputed Change Order requests and attempt to resolve them as expeditiously as possible.

**§1.4.17** Review and be responsible for the Project safety programs as required by applicable law. Require that all Subcontractors comply with all applicable Federal, State, and local safety, health, environmental protection, and any other Project Legal Requirements in the contract documents.

**§1.4.18** Obtain Project building and Project Site permits for construction of the Project. Obtain, with cooperation and assistance as necessary from Owner, all other necessary permits for permanent improvements (such as sprinkler permits and Project and Project Site inspection signoffs by trade). Verify that applicable fees and assessments have been paid. Obtain approvals from authorities having jurisdiction over the Project. If Substantial Completion of the Project is delayed due to a delay in permitting or code issues raised during inspections, through no fault of Contractor, Contractor may be entitled to an appropriate time extension and/or additional compensation for project staff and time-related general conditions costs after a thorough review by Owner. Such compensation adjustment may be funded from unused Contingency.

**§1.4.19** As necessary, recommend to Owner and, upon obtaining Owner's consent or upon Owner's request, arrange for the retention of special consultants or inspectors and coordinate, manage, and administer their Work; take such steps as are necessary to see to it that those consultants or inspectors (a) are given sufficient notice of the time when their presence is required at the Project and (b) are present when required. The costs of special consultants, not reasonably required for normal performance of the work will be treated as extra work.

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**§1.4.20** Ensure that the Work is being performed in accordance with the requirements of the Contract Documents. Guard Owner against defects and deficiencies in the Work and increases in cost. As appropriate, request special inspection or testing or make recommendations to Engineer regarding special inspection or testing of Work not in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed, or completed. Subject to review by Engineer, reject Work which does not conform to the requirements of the Contract Documents and cause correction of such defective Work. Upon Contractor's receipt of a notice of non-compliance from Owner's testing consultant, Contractor shall either (a) correct any item of noncompliance within seventy-two (72) hours of Contractor's receipt of such notice or (b) within such seventy-two (72) hour period, notify Owner in writing of all steps needed to make such correction(s), together with a schedule for performing such correction(s); the form of notice of non-compliance will be furnished by Owner.

**§1.4.21** Be responsible for construction means, methods, techniques, sequences, and procedures employed by Contractor and all Subcontractors in the performance of their Work and be responsible for the failure of Contractor or any Subcontractor to carry out Work in accordance with the Contract Documents.

**§1.4.22** Consult with Engineer and Owner regarding interpretations of the meaning and intent of the Drawings and Specifications and assist in the resolution of questions that may arise.

**§1.4.23** Review the original evidence of insurance of each Subcontractor and verify that the evidence complies with the Subcontractor's subcontract. Approved evidence of insurance shall be forwarded to Owner with a copy to Engineer prior to commencement of the Work, with evidence of insurance to be maintained current and in full force and effect through job completion.

**§1.4.24** Establish with Engineer a schedule for the submittal, processing and approval of Shop Drawings, Product Data and Samples; and for construction of mock-up(s) allowing reasonable time for review, revision, and approval; and incorporating key milestones dates of Owner Approved Project Schedule.

**§1.4.25** Receive and review from the Subcontractors all Shop Drawings, Product Data, Samples, and other submittals. Coordinate them with information contained in related documents and transmit to Engineer those recommended for approval. Submittals sent to Engineer by Contractor shall be deemed to have been favorably reviewed by Contractor. After return of the Shop Drawings from Engineer, review Engineer's comments to the Shop Drawings; evaluate and consult with Owner on their impact on the Project; and distribute them to the submitting Subcontractor and all other affected parties so that the Work may be properly coordinated and performed. Contractor shall in any event promptly report to Owner any error which it identifies. Nothing contained in this Section 1.4.25, however, shall limit the responsibility of Contractor, Subcontractors, or Engineer to assure that the Shop Drawings comply with the Contract Documents.

**§1.4.26** Record the progress of the Project. As a supplement to each Monthly Accounting Report, submit a written progress report in narrative form and with photographs to Owner and Engineer including information updates on each Subcontractor's Work, as well as the entire Project. Keep a daily log containing records of weather, Subcontractors' Work on the Project Site, number of workers, Work accomplished, problems encountered, visitors to the Project Site, governmental and quasi-governmental agency inspections, and other similar relevant data as Owner may require. Make log available to Owner and Engineer upon request.

**§1.4.27** Maintain at the Project Site on a current basis: all record copies of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; materials; equipment; "as-built" Drawings; material safety data sheets; applicable handbooks; maintenance

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and operating manuals and instructions; other related documents and revisions which arise out of the Work. Maintain records for new construction only, in duplicate, of principal Project and Project Site layout lines, and key elevations certified by a qualified surveyor or professional engineer. Make all records available to Owner and Engineer. At the completion of the Project but prior to final payment, deliver all such records to Owner in a format to be determined by Owner at Substantial Completion.

**§1.4.28** Copy Owner on all correspondence, memoranda, and bulletins by Contractor to Engineer, Consultants, and public agencies. Deliver to Owner on a current and up-to-date basis copies of all written communications received from public agencies. Copy Owner on all default notices sent to or received from Subcontractors.

**§1.4.29** Arrange for delivery, storage, protection, and security (off-site, if necessary) for materials, systems, and equipment that are a part of the Project.

**§1.4.30** Take such steps as are necessary in Contractor's reasonable judgment during emergencies, without the prior approval of Owner, to protect life and property. In connection with such emergency, arrange for the taking of photographs and the preparation of reports and recommendations to Owner in writing for the engagement of such consultants and inspection services as are prudent to record the facts, and cooperate and assist in obtaining insurance recoveries. As soon as possible, Owner is to be notified by Contractor of any emergency and the actions taken by Contractor in connection therewith.

**§1.4.31** With Engineer and Owner's maintenance personnel, direct the checkout of utilities, operational systems, and equipment for readiness and assist in their initial start-up and testing.

**§1.4.32** Assist on an on-going basis during the progress of the Work, and as the Work nears completion, in the preparation of "punch-lists," and thereafter secure and supervise the timely performance of Work necessary to correct items listed on such punch-lists. When Contractor considers each Subcontractor's Work or a designated portion thereof substantially complete, Contractor shall prepare for Engineer and Owner a list of incomplete or unsatisfactory items (final punch list) and a schedule for their completion. Contractor shall notify Engineer of inspection(s) to allow Engineer to participate with conducting inspections.

**§1.4.33** Contractor shall be responsible for the correction and completion of the Work. Verify that all outstanding Work, including punch-list Work, has been completed; that all as-built Drawings, maintenance manuals, records and operating instructions have been received and approved by Owner; that Owner has received all applicable warranties and guarantees in writing, and that the surety's consent to final payment under any Subcontract, if applicable, shall have been obtained.

**§1.4.34** Contractor shall:

a) Assist Engineer in determining when the Project or a designated portion thereof is substantially complete. Prepare for Engineer and Owner a summary of the status of the Work of each Subcontractor, listing changes in any previously issued "Certificate of Substantial Completion" of the Work and recommending the times within which Subcontractors shall complete incomplete items noted in connection with their Certificate of Substantial Completion of the Work.

b) Following Engineer's issuance of a Certificate of Substantial Completion of the Project or designated portion thereof, evaluate the completion of the Work of the Subcontractors and make recommendations to Engineer and Owner when the Work is ready for final inspection. Assist Engineer in conducting final inspections.

c) Final Completion of Work shall be deemed the date on which Owner, in its reasonable

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judgment, shall have received satisfactory evidence that:

i) All Work, including all punch list work, has been fully and satisfactorily completed in a good and workmanlike manner in strict conformance with the Construction Documents, and the work product is ready for use;

ii) Contractor has performed all of its Work and provided Owner with all final certificates of approval relating to the Work and the contemplated use thereof, including without limitation all necessary temporary and permanent certificates of occupancy, public assembly permits, other operational permits, and all such permits and certificates shall have been issued and delivered to Owner, unless undeliverable for reason beyond Contractor's control; and

iii) All required releases of claims for payment, affidavits, waivers, guarantees, warranties, bonds, "as-built" Drawings, and any other documents required under this Contract, or the Subcontracts shall have been issued and delivered to Owner in duplicate.

**§1.4.35** Secure and deliver to Owner all required guarantees, affidavits, releases of claims, certificates, consent of any surety to final payment, and other documents required to be delivered under this Contract in accordance with the Contract Documents. Arrange for completion and delivery to Owner of a reproducible set of "as-built" Drawings showing the Work as actually completed and cause the Subcontractors to furnish to Owner a reproducible set of "as-built" Drawings pursuant to their respective Subcontracts. Provide three (3) copies of installation, maintenance, and operation manuals on all equipment. Familiarize Owner's operations staff with the operation of the systems installed. Provide a bound copy of the "as-built" Drawings incorporating field Modifications, Shop Drawings, and other documents, completely and clearly reflecting final conditions.

**§1.4.36** Promptly give all notices received by Contractor and related to the Project to Owner, Engineer, and any necessary governmental authorities and comply with all Legal Requirements. As used herein, the term "Legal Requirements" shall include compliance with (a) applicable federal, state, and local governmental statues, laws, rules, orders, regulations, ordinances, judgments, decrees, and injunctions; (b) all terms of insurance policies and the issuers thereof covering or applicable to the Project Site or to the Project; and (c) all orders of the applicable Fire Marshall. If Contractor observes or determines that any Work or any Contract Document is at variance with any of the preceding items (a) through (c), Contractor shall promptly notify Owner and Engineer of such variance.

**§1.4.37** At the completion of the Project, remove or cause to be removed all waste materials and rubbish from and about the Project, as well as tools, construction equipment, machinery, and surplus materials.

**§1.4.38** At the completion of the Project, enforce warranties and guarantees applicable to Subcontractors and coordinate any Work performed in connection therewith.

**§1.4.39** Use all best efforts to ensure that Contractor's and all Subcontractor's activities do not interfere with any Project and/or Project Site systems (i.e., electric, elevator, plumbing, HVAC, etc.) necessary to maintain ongoing operations of the Project and Project Site. Contractor will provide Owner with two (2) full business days advance notice of any planned shutdowns of basic Project and Project Site systems and will obtain Owner's written approval prior to commencing any such shutdown. Contractor shall separately notify Owner at least seven (7) full calendar days before such planned shutdown if denial will have an adverse impact on the Project Schedule.

**§1.4.40** To the extent permitted by applicable law, endeavor not to permit any lien to be filed or otherwise

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imposed on any part of the Work or on the Project Site. (The project is not lienable pursuant to Chapter 713 Florida Statutes.) If any lien or claim is filed or otherwise sought to be imposed by Contractor, any Subcontractor, or supplier, then Contractor, at its sole cost and expense, shall within fifteen (15) calendar days of notice thereof to Contractor cause such lien to be released and discharged, or shall furnish to Owner a bond to secure or transfer the lien in the amount of 150% of the lien. This obligation does not arise if it is clear that Owner has not paid Contractor for the amount of the claim. Whether or not Contractor has been paid the amount of the claim, if Contractor does not cause such lien to be released, or file a bond in lieu thereof, Owner shall have the right to pay all sums necessary to obtain the release and discharge and deduct all amounts so paid from the Contract Sum or deduct the same from unpaid Applications for Payment until the total amount of same shall be recouped, as Owner may elect. Contractor shall indemnify, defend, and hold harmless Owner from all Claims, losses, demands, causes of action or suits of whatever nature arising out of any such lien or that part of the Work covered thereby if Owner has paid Contractor for the work claimed in the lien.

**§1.4.41** Reserved.

**§1.5 ADVERTISING AND SIGNAGE RESTRICTIONS**

**§1.5.1** Contractor shall not itself, nor suffer or permit anyone else, to advertise the Project or any participation therein without Owner's prior written consent, which consent may be unreasonably withheld. Contractor shall not itself nor permit anyone else to place any signage (other than safety or directional signage) on or about the Project and Project Site without Owner's prior written consent, which consent may be unreasonably withheld.

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## *ARTICLE 2*
## OWNER'S RIGHTS AND RESPONSIBILITIES

**§2.1** Owner reserves the right to perform Work related to the Project with Owner's own forces, and to award contracts in connection with the Project, which are not a part of Contractor's responsibilities under this Contract. Contractor shall notify Owner if any such separate contract(s) will in any way compromise Contractor's ability to meet Contractor's responsibilities under this Contract. Contractor shall fully cooperate with Owner's separate contractors, and such separate contractors and Owner shall also fully cooperate with Contractor.

**§2.2** Owner shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Work.

**§2.3** Owner's Representative for purposes of this Contract shall be the Director of Construction Management, or such other person so designated by Owner in writing to Contractor ("Owner's Representative").

## *ARTICLE 3*
## GUARANTEED MAXIMUM PRICE (GMP)

**§3.1** Upon award of all subcontracts, Contractor may modify GMP Schedule of Values to adjust individual line-item values to correspond with applicable Subcontractor prices as provided in Section 1.4.15.

**§3.2** Notwithstanding any inconsistencies in the Drawings or Specifications or between them, Contractor warrants and represents that the GMP represents the cost for a complete and operating Project containing all fully functional elements set forth in the Drawings and Specifications and the cost for all work depicted in the Drawings or Specifications or reasonably inferable therefrom.

## *ARTICLE 4*
## REIMBURSABLE COSTS WITHIN THE GUARANTEED MAXIMUM PRICE

**§4.1 INCLUDED COSTS OF WORK**

**§4.1.1** All of the items listed below in this Section 4.1 relating to reasonable costs actually and necessarily incurred by Contractor in the performance of the Work are referred to herein as the "Cost of the Work". All costs defined herein shall be actual direct costs paid by Contractor, less all discounts, rebates and salvages that should be taken by Contractor as a result of Owner funding the work to allow for such discounts. All payments made by Owner pursuant to this Article 4, whether those payments are actually made before or after the execution of this Contract, are included within the GMP. In no event shall Owner be required to reimburse Contractor for any portion of the cost of the Work incurred prior to the notice to proceed date unless Contractor has received Owner's written consent for such prior work.

**§4.1.2** The salaries, wages, and employee benefits of all labor in the employ of Contractor (including the Project manager, Project superintendent and assistants, foreman, engineers, safety personnel, timekeepers, clerks, cost accountants, laborers and other trades as required to perform the Work) when stationed at the Field office or for their time spent participating on the Project. Owner shall approve, in writing or by acceptance of the GMP and/or the applicable Exhibits if such personnel, their specific role in the Project and the amount of time to be spent on the Project are set forth therein, the reimbursable supervisory and administrative personnel prior to the commencement of construction. If any personnel are replaced or if Contractor brings additional personnel to the Project Site, Contractor shall get written authorization from Owner prior to those personnel being charged to the Project. Without such authorization, any project cost for such personnel will not be reimbursed as a cost of the work.

**§4.1.3** Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation, social security, insurance, medical and health benefits, and pension and retirement contributions (such costs being limited to actual, reasonable, verifiable costs, subject to audit, and shall not include any profit). These costs (Labor Burden) shall be accounted for and established at the commencement of the Contract for use of a rate applicable to the Contract for funding during work progress. All costs are subject to final audit and adjustment for actual costs unless such costs are included or categorized as a "lump sum amount" or "fixed price" in the GMP Proposal and/or the applicable Exhibits.

**§4.1.4** The reasonable cost (as approved by Owner) of travel of personnel in Section 4.1.2 while traveling in connection with the Work, specifically excluding any travel for the convenience of Contractor or between Contractor's office or other job sites and the Project Site. Reasonable costs are at coach class rates. While Contractor may use higher fares at its own expense, reimbursement will be at the coach class rate.

**§4.1.5** Transportation by employee-owned passenger automobiles supplied directly in connection with the Work by personnel listed in Section 4.1.2, limited to the maximum per mile charge allowed by the Internal Revenue Service; provided however that employees' travel between home and work shall not be a reimbursable cost. Costs of leased or rented passenger vehicles and/or vehicle allowances granted to management and supervisory personnel listed in Section 4.1.2. If such leased or rented passenger vehicles are owned by Contractor or an entity related to Contractor, then such rental charges are limited as described in Section 4.1.18.

**§4.1.6** The cost of reproduction of project documents such as, but not necessarily limited to, design documents, bid packages, permit applications, submittals, shop drawings, photographs, maps, charts, and reports.

**§4.1.7** The costs of any insurance premiums associated with Contractor's obligations to carry insurance

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coverage under this agreement in addition to the costs of Contractor's existing insurance premiums.

**§4.1.8** The actual, reasonable, and documented cost of special consultants assigned to the Project and performing work on the Project site on a temporary basis, if required in the performance of the Work with prior written approval by Owner, including Contractor's mechanical, electrical, structural, scheduling, waterproofing, material testing, permit expediting, public and Subcontractor outreach, and other consultants that may perform Work on behalf of the Project.

**§4.1.9** Fuel and maintenance for all construction equipment and supervisory personnel vehicles used in connection with the Work (if the rental rates established for any vehicles owned by Contractor or a related entity do not include fuel and maintenance costs).

**§4.1.10** Actual costs of field Project Site office.

**§4.1.11** All costs for cleanup and removal of debris; and safety and traffic control.

**§4.1.12** Construction utilities, including power, water, phone, internet, temporary sewer, and waste disposal costs.

**§4.1.13** Warehousing or storage of material and equipment received prior to installation with prior written approval by Owner. If, in Owner's sole opinion, such requested warehousing and storage costs are due to Contractor caused delays and/or poor sequencing of the Work by Contractor, Owner may elect to not approve these costs.

**§4.1.14** Cost of Contractor's, Subcontractor's and suppliers' bonds and Subcontractor default insurance, if required.

**§4.1.15** Cost of all materials, supplies and equipment incorporated in the Work, including costs of postage, freight/shipping/transportation, and storage thereof.

**§4.1.16** Payments made by Contractor to Subcontractors and suppliers for Work performed pursuant to this Contract and properly entered into under this Contract.

**§4.1.17** Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which are paid for by Owner, shall become the property of Owner and shall be delivered to Owner upon completion of the Work in accordance with the instructions furnished by Owner.

**§4.1.18** Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Project Site of the Work, whether rented from Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery costs thereof. The rental rates for any machinery and equipment owned by Contractor or an affiliated entity shall be agreed upon by Owner and Contractor in advance, and those rates (which shall be exclusive of fuel and maintenance costs) shall be incorporated into a rate schedule as **Exhibit I**. Notwithstanding anything to the contrary in **Exhibit I**, the aggregate amount of rental costs charged for any individual piece of Contractor-owned machinery or equipment shall be limited to 80% of its fair market value. Further, if and to the extent Owner reimburses Contractor rental costs for an individual tool or piece of equipment up to an amount equal to or greater than 80% of its fair market value, Owner shall have the right to purchase that item from Contractor by paying the difference. The rental charges for equipment and machinery which is not owned by Contractor, or an affiliated entity shall not exceed prevailing market rates.

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**§4.1.19** Sales, use, gross receipts, transaction, privilege, or similar taxes related to the Work lawfully imposed by any governmental authority.

**§4.1.20** Costs of licenses and licensing necessary for the performance of the Work, tests, and royalties for which Contractor is responsible.

**§4.1.21** Costs to repair/replace damaged Work to the extent not caused by Contractor or someone for whom Contractor is contractually or legally responsible. Contractor will diligently pursue recovery of such repair/replacement costs from the wrongdoer to minimize the cost to Owner.

**§4.1.22** Costs approved by Owner from the Contingency Fund, if any. Owner agrees that it shall not unreasonably withhold its consent to the use of the Contingency Fund. Contractor shall provide a detailed explanation as to the basis for requesting a disbursement therefrom.

**§4.1.23** Costs for watchman and security services for the project, if applicable.

**§4.1.24** Cost for preparation and coordination of as built/record drawings

**§4.1.25** Costs and expenses Contractor incurred for Pre-Construction Services as enumerated in **Exhibit C**.

**§4.2 EXCLUDED COSTS OF WORK**

**§4.2.1** Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the Project Site office (except that Contractor shall be compensated for that portion of the Project Manager's and/or other project staff member's time which is devoted to this Project regardless of whether the person is physically on- site, in Contractor's principal office, or elsewhere during that time).

**§4.2.2** Expenses of Contractor's principal office and offices other than the Project Site.

**§4.2.3** Home office overhead and general expenses.

**§4.2.4** Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

**§4.2.5** Rental costs of machinery and equipment, except as specifically provided in Section 4.1.18.

**§4.2.6** Costs due to the fault or negligence of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective, or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

**§4.2.7** Any cost not specifically and expressly described in Section 4.1.

**§4.2.8** Costs which would cause the GMP to be exceeded.

**§4.2.9** Damages assessed in favor of Owner against Contractor.

**§4.3** Contractor shall have an affirmative obligation to seek out and obtain cash discounts when such is in the best interest of the Project and approved by Owner. Cash discounts obtained on payments made by Contractor shall accrue to Owner if (a) before making the payment, Contractor included them in an

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Application for Payment and received payment therefor from Owner, or (b) Owner has deposited funds with Contractor with which to make payments; otherwise, cash discounts shall accrue to Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be secured. Amounts that accrue to Owner in accordance with the above provisions shall be credited to Owner as a deduction from the cost of the Work. At the end of the Project, any equipment for which Owner has paid rent equal to or exceeding its fair market value will become the property of Owner, (i.e., office equipment, furniture, vehicles, etc.).

**§4.4** Contractor's actual cost for insurance and bonds shall be considered to be included within the maximum limit for General Conditions' costs. All premiums for any insurance and bonds required for the Project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, bond dividends, bond rebates, etc.

## ***ARTICLE 5***
## SCHEDULE AND COORDINATION

### §5.1 TIME OF PERFORMANCE

**§5.1.1** Time is of the essence in the performance of Contractor's obligations under this Contract. Contractor is required to achieve Substantial Completion of the Project, as certified by Engineer, as provided by the Substantial Completion and Final Completion duration contained in Paragraph D of Part I, and to achieve all "Interim Milestone" dates identified in the approved Project Schedule, **Exhibit B.** Contractor is firmly obligated to meet the stipulated completion dates and the Interim Milestone dates for its Work, except as any such dates may be changed pursuant to Section 5.8. In order for the Project to be deemed to have achieved Substantial Completion the Project must, at a minimum, be sufficiently complete to allow Owner to use, occupy, and operate the Project for its intended purpose and fully open to the public.

**§5.1.2** Contractor shall use its best efforts to complete all punch list and warranty work in a prompt and efficient manner, and so as to avoid any unnecessary disruption to Owner's operations. Should Contractor fail to promptly commence and complete any punch list work within Thirty-Six (36) calendar days after receiving the punch list or fail to commence and complete any necessary warranty work within a reasonable time after receiving notice thereof, then Owner, unless such failure to complete the work is through no fault of Contractor, shall have the right to perform such work itself or through another contractor and to deduct all costs thereof from any remaining Contract balance including a 30% fee for administration of the punch list work. To the extent such costs exceed the remaining Contract balance Contractor shall be responsible for all such costs and for promptly reimbursing Owner for same.

### §5.2 COMPLETION DATES

**§5.2.1** Contractor shall advise Owner at least seventy-two (72) hours in advance of beginning actual construction operations, including surveying and layout.

**§5.2.2** Contractor is required to complete all Work under this Contract within the durations specified, as set forth in Paragraph D Part I of the Contract. Completion of Work prior to any Interim Milestone or the final Completion Date will not entitle Contractor to additional compensation.

**§5.2.3** Contractor shall prosecute the Work continuously and diligently, using such means and methods of Work as will assure its completion no later than the date specified therefor, or on the date to which time for completion may be extended in writing by Owner.

**§5.2.4** Neither party hereto shall be considered in default in the performance of its obligations with respect to scheduled performance to the extent that the performance of any obligation is prevented or delayed by

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an "Excusable Delay"

**§5.2.4.1** "Excusable Delays" consist of delays caused by acts of God, fires, floods, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, or any other cause beyond Contractor's control. In every case, the failure to perform must be reasonably beyond the control of Contractor. The financial difficulties of Contractor and/or any Subcontractor shall not constitute Excusable Delays. Mismanagement by Contractor or any Subcontractor shall not constitute an Excusable Delay. In order to receive any time extension as a result of an Excusable Delay, the Excusable Delay must impact the overall completion date for the Project and Contractor must comply with Section 5.7.1.

**§5.3 CONTRACT SCHEDULE**

**§5.3.1** Contractor has furnished or will furnish, as part of the Contract Documents, a detailed Construction Schedule describing the activities to be accomplished and their dependency relationships. All Completion Dates shown shall be within the periods specified for substantial and final Contract completion, and in compliance with all Intermediate Milestones, as set forth on the Construction Schedule set forth in **Exhibit B,** against which Contractor's performance will be measured. The Project Schedule (and any revisions thereto) shall be updated and revised at appropriate intervals as required by Owner or upon written changes to the Contract Completion Date, shall set forth adjusted milestones and Substantial Completion Dates for the Work shall designate those items on the critical path of the Work, shall be related to the entire Project to the extent required by the Contract Documents, shall indicate dates necessary to vacate various work areas, and shall provide for expeditious and practicable execution of the Work. Any item that cannot be demonstrated as affecting the critical path of the Work shall not result in an extension of time to perform the Work in the event such item is delayed.

**§5.4 SCHEDULE UPDATES**

**§5.4.1** Contractor shall prepare Construction Schedule progress updates twice per month for comparison to the Project Schedule and submit these in conjunction with Applications for Payment. Contractor shall prepare Construction Schedule progress updates once per month for comparison to the Project Schedule and submit these in conjunction with Applications for Payment. These updates shall include:

**§5.4.2** The effect on the schedule of any delays in any activities in progress and/or the impact of known or suspected delays which are expected to affect future Work.

**§5.4.3** The effect of Contract Modifications on the schedule.

**§5.4.4** Schedule changes for the purpose of regaining lost time or improving progress.

**§5.4.5** Contractual changes, as approved by Owner, to milestones, due dates, and the overall Contract completion date since the last revision of the Approved Project Schedule.

**§5.5 COOPERATION**

**§5.5.1** Contractor shall schedule its Work and Project delivery of materials to comply with all reasonable requests and suggestions of Owner in order to maintain the Contract Schedule.

**§5.5.2** Contractor shall not utilize any labor, materials or means whose employment or utilization during the course of this Contract may cause or result in work stoppages, delays, suspension of Work or similar trouble by workmen employed by its Subcontractors, or by any of the trades working in or about the Project and Project Sites and premises where Work is being performed under this Contract; or by other contractors or their subcontractors pursuant to other contracts, or on any other project and project site or premises owned or operated by Owner. Any violation by Contractor of this requirement may be considered as proper

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and sufficient cause for declaring Contractor to be in default, and for Owner to take action against Contractor as set forth in the General Conditions or such other action as Owner may deem proper.

**§5.5.3** In case of disagreements or disputes regarding the schedule of Work by other contractors or unnecessary interference to the Work caused by lack of cooperation between other contractors and Contractor, Contractor shall fully cooperate to resolve any disputes with or between other contractors. In case of disagreements or disputes between two or more contractors, Owner shall be consulted and Owner's decisions as to proper methods for coordinating the Work shall be final, provided Owner accepts the impact of such decision on the Project cost and schedule. Contractor shall provide access to the Work so as to fully cooperate with Owner and other contractors in the performance of their Work.

**§5.5.4** Contractor shall make connections to materials or equipment furnished, set and/or installed by other contractors provided such connections are included in the GMP as Cost of the Work.

**§5.5.5** Contractor shall review the Shop Drawing provided by Owner or Owner's other contractors for such of their Work as is to be built into its Work, or to which it must make connection, and shall also measure for Owner any discrepancy or unsuitability relative to its own Work to the best of Contractor's ability.

**§5.5.6** Contractor shall verify utility locations if (a) their removal and/or relocation is required by the Specifications and Drawings, or (b) there is any conflict between existing utilities and the Work. Contractor shall coordinate with Owner and with those utility companies so that the Work is progressed to maintain the Contract Schedule, while taking into account the operational needs of Owner.

**§5.6 PROGRESS OF WORK**

**§5.6.1** The GMP will be based on Contractor working as many hours as necessary to properly perform the Work to achieve the schedule requirements. In the event it is necessary for Contractor or any Subcontractor to work overtime in order to maintain the Approved Project Schedule, Contractor shall be responsible for all costs relating to such overtime, unless such overtime work is required as the result of an Excusable Delay.

**§5.6.2** If Contractor fails to maintain the Approved Project Schedule, Contractor shall take such steps as may be necessary to improve its progress and Owner may require it to increase the manpower or shifts, or days and hours of work, or the amount of construction equipment, or all the aforementioned, and to submit for approval such supplementary schedule or schedules as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, without additional cost to OWNER. If Contractor fails to submit an acceptable schedule demonstrating a realistic plan to return to the Project Schedule in total, Owner reserves the right to direct Contractor to utilize additional labor, premium time, equipment, and material to progress the Work in accordance with the Approved Project Schedule at no additional cost to Owner beyond the GMP. In the event Contractor subsequently provides conclusive evidence that Contractor's original plan was realistic and that premium time and/or additional labor which Contractor was directed to use by Owner was unnecessary to maintain the Approved Project Schedule, Owner shall be responsible for paying the difference in cost between Contractor's plan and such remedial action as directed by Owner.

**§5.6.3** A material and continuing failure of Contractor to comply with the requirements of the schedule under this Contract shall be grounds for withholding payment of the whole or part of any sum due or claimed by Contractor which relates to the failure to meet the schedule and/or Owner may declare CONTRACTOR in default and terminate Contractor's right to proceed with the Work, or any separable part thereof, and to seek damages, all in accordance with the terms of this Contract.

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**§5.7 NOTICE OF DELAY OR DISRUPTION**

**§5.7.1** Should Contractor be or anticipate being delayed or disrupted in performing the Work hereunder for any reason, including without limitation, its financial condition or Contractor's general nonpayment of its debts as such debts become due, it shall promptly, and in no event more than ten (10) calendar days after the commencement of any condition that is causing or is threatening to cause such delay or disruption, notify Owner in writing of the condition and inform Owner of the effect of such condition upon the Approved Project Schedule, stating why and in what respects the condition is causing or is threatening to cause delay; provided, however, that notwithstanding the above, if such delay or disruption, or anticipated delay or disruption, should be the result of any change or anticipated change in Contractor's financial condition, Contractor shall notify Owner forthwith of such cause or anticipated cause. Failure to comply strictly with this notice requirement shall be sufficient cause to deny Contractor a change in schedule (if Contractor would otherwise be entitled to a change in schedule under this Contract) on a day-to-day basis for each day beginning on the date that is ten (10) calendar days from the date that Contractor becomes aware of such cause for delay or disruption and continuing until the date such notice is given.

**§5.8 EXTENSION OF TIME/EXCUSABLE DELAY**

**§5.8.1** Revised Contract Completion dates for the Work will be authorized by Owner only if (a) Contractor has been necessarily delayed in meeting the critical path for such Completion Date by a cause which constitutes an Excusable Delay or a change to the Work initiated by Owner or Engineer, or some other cause for which Owner is responsible; (b) such cause becomes apparent after the execution of the Contract and was not discovered by Contractor in the course of its prudent and professional investigation of the Project and Project Site as described herein; (c) the completion of the Work by the applicable Interim Milestone or the total Project by the Substantial Completion date is actually and necessarily delayed in its critical path by such cause; (d) the effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay; and (e) Contractor has met any notice requirements set forth in this Contract for it to be entitled to any extension of time. All extensions of time to which Contractor is entitled hereunder will be by Change Order.

**§5.8.2** Contractor agrees that no extension of time will be granted for time lost due to normal seasonal weather conditions. If unusually severe weather can be shown to have affected the critical path, a non-compensable time extension will be granted for the period of such delay at no additional cost to Owner. 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 and 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.

**§5.8.3** Any reference in this Article to Contractor shall be deemed to include Subcontractors.

**§5.8.4** The period of any extension of time shall be only that which is necessary to make up the time actually lost for a work item identifiable on Contractor's schedule as being on or affecting the critical path at the time in which the delay occurs.

**§5.8.5** Contractor shall not be entitled to receive a separate extension of time for each of several causes of

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delay to the critical path operating concurrently but only for the actual period of delay in completion of the Work irrespective of the number of causes contributing to produce such delay.

**§5.8.6** As a condition precedent to the granting of an extension of time, Contractor shall give written notice to Owner within ten (10) calendar days after the time when Contractor knows of any cause which might result in delay, for which it may claim an extension of time, including those causes of which Owner has knowledge, specifically stating in such notice that an extension is or may be claimed; identifying such cause and describing, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice.

**§5.8.7** Since the possible necessity for an extension of time may materially alter the scheduling plans, and other actions of Owner and since, with sufficient notice, Owner may, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time might be claimed, the giving of written notice as required above is of the essence of Contractor's obligations hereunder. If failure of Contractor to give written notice as required above actually prevents Owner from the opportunity to mitigate the effect of the delay, Contractor will waive that portion of the claim that Owner was then unable to mitigate.

**§5.8.8** It shall in all cases be presumed that no extension, or further extension, of time is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner. Contractor shall maintain adequate records supporting any claim for an extension of time.

## ***ARTICLE 6***
## PAYMENTS TO CONTRACTOR

### §6.1 PAYMENTS ON ACCOUNT OF CONTRACTOR'S FEE

**§6.1.1** In no event shall the aggregate of the final cost of the Work plus Contractor's Fee exceed the GMP, as adjusted in accordance with this Contract. Contractor shall present for each payment period, as part of its Application for Payment, a statement in reasonable detail of the amount of the fee payable hereunder, which fee shall be based upon the Schedule of Values as set forth in **Exhibit C**, but shall in no event exceed, as a percentage of the total Contractor's Fee, the percentage of the Work then completed, less retainage.

### §6.2 PAYMENTS ON ACCOUNT OF COSTS OF WORK WITHIN THE GMP

**§6.2.1** Payments on account of Costs of Work within the GMP, as defined in Article 4, shall be made within Thirty (30) calendar days after certification and approval by Owner of Contractor's Application for Payment, which Application shall itemize all Costs of Work within the GMP in reasonable detail.

### §6.3 REQUISITIONING PROCEDURE WITH RESPECT TO COSTS

**§6.3.1** Contractor shall receive and approve, modify, or reject the Subcontractors' monthly requisitions for payment and prepare and submit to Owner a monthly aggregate requisition (an "Application for Payment"). Owner shall review and approve, modify, or reject each Application for Payment prepared by Contractor. The Application for Payment shall be comprised of (a) the requisitions of each of the Subcontractors (to the extent approved or modified by Contractor) for Work completed as of the end of the preceding month less applicable retention; (b) amounts payable for Costs of Work within the GMP; and (c) the portion of Contractor's Fee payable under this Contract at of the end of the month preceding the month in which the Application for Payment is submitted. Delivery and payment of Applications for Payment shall be subject to the conditions specified in Section 26.2.

### §6.4 PARTIAL WAIVERS

**§6.4.1** Partial waivers of claim must accompany all Applications for Payments by Contractor and all Subcontractors, vendors, suppliers, and any others providing labor, materials, or services to the Project in a form acceptable to Owner. Waivers submitted with Payment Applications for work in the application

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period may be conditioned upon receipt of payment. Unconditional waivers shall be substituted for the conditional waivers by the next application for payment unless Owner has not paid Contractor. The final Application for Payment must be accompanied by final unconditional "Waivers of Claims" from all such entities and individuals, in a form acceptable to Owner.

**§6.5 RETAINAGE**

**§6.5.1** Owner may withhold 5% of all payment as retainage until substantial completion, at which time the retainage will be reduced to 2.5% of all prior payments or 200% of the value of incomplete work, whichever is greater. Owner may at its own discretion reduce retainage after the Contract is at least 50% complete to allow the full payment of Subcontractors who have completed their work. Retainage will not be applied to Contractor's bonds and insurances.

**§6.6 FINANCIAL RECORDS**

**§6.6.1** Owner has the right to perform audits of all Project financial records (including a final audit) of Contractor and its Subcontractors, vendors, and suppliers throughout the Project and/or at the end of the project at Owner's convenience to verify the billings submitted by Contractor and to make adjustments for improper billings revealed by the audit.

**§6.6.1.1** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to Owner. Owner and Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, Applications for Payment, lien waivers, subcontract requisitions, purchase statements, contract modifications, amendments, vouchers, memoranda and other data relating to this Contract and/or the Project, and Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Contractor shall make all Project records available to Owner at the Project site.

**§6.6.1.2** As part of any Final Billing, Contractor shall provide Owner with a Final Accounting of the Project costs. Owner's accountants will review and report in writing on Contractor's final accounting within thirty (30) calendar days after delivery of a final accounting to Owner by Contractor. If Contractor's Final Accounting is confirmed by Owner's accountants, then payment shall be made as provided in Section 28.4. If Owner's accountants report the Cost of the Work as substantiated by Contractor's final accounting to be less than claimed by Contractor, then pending a final resolution of the disputed amount, Owner shall pay Contractor the amount which is not disputed. To the extent that Owner has overpaid Contractor, Contractor shall repay to Owner the overpayment amount.

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## ***ARTICLE 7***
## NOTICES

**§7.1** All notices or other communications provided for by this Contract shall be in writing ("Notice") and sent to the individuals identified below. 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 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.

**TO OWNER:** SEMINOLE TRIBE OF FLORIDA
6300 Stirling Road

Hollywood, FL 33024

**WITH COPIES TO:** Seminole Tribe of Florida
c/o Jim Shore, Esq.
6300 Stirling Road
Hollywood, FL 33024

**and OWNER REPRESENTATIVE**: Seminole Tribe of Florida
c/o Ricardo Rivera
Attn: Director of the Construction Management Department
5700 Griffin Road
Davie, FL 33314

**TO CONTRACTOR:** Wharton-Smith, Inc.
Darin A. Crafton
Attn: COO
750 Monroe Road
Sanford, Florida 32771

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## ***ARTICLE 8***
## DISPUTE RESOLUTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY

**§8.1** Nothing contained in the Contract Documents shall be deemed or construed to constitute consent on the part of Owner or Contractor to arbitrate any matter or dispute, and nothing contained herein shall be deemed or construed to constitute an obligation or intent on the part of Owner or Contractor to arbitrate any matter or dispute whatsoever.

**§8.2** This Contract shall be governed by the laws of the State of Florida and by such laws of the United States of America as are applicable. Except as otherwise noted below, by referring to federal law and the laws of the State of Florida, this Contract is not intended to, and does not: a) incorporate any administrative or other dispute resolution procedure contained therein; b) subject Owner, Contractor, or the Project to the jurisdiction of the State of Florida or its courts or administrative bodies; or c) grant the State of Florida jurisdiction over this project. Any controversy or claim arising out of or relating to this Contract, or the alleged breach thereof shall be resolved in the manner set forth below.

The parties shall first attempt to resolve any controversy or claim arising out of or relating this Contract, or the alleged breach thereof, by negotiating in good faith for a period not to exceed thirty (30) calendar days with each other with a view toward resolving their dispute voluntarily. If the voluntary efforts of the parties at direct negotiations fail, the parties shall then submit the dispute to mediation, as set forth below:

Such mediation shall take place within sixty (60) calendar days after the failure of voluntary negotiations between the parties. Under no circumstances will the mediation operate as a waiver of tribal sovereign immunity. Mediation may be initiated by either party upon ten (10) calendar days' written notice to the other party. All mediation proceedings shall be held at the Administrative Offices of Owner within the confines of Broward County in the State of Florida. Selection of the mediator shall be subject to the mutual agreement of the parties. In the alternative, the mediator shall be selected by a neutral third party. The mediator shall be Board Certified in Construction law or a former member of the Florida judiciary with background in construction cases. 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 other proceeding. The mediator is authorized to end the mediation whenever further efforts at

mediation would not reasonably contribute to a resolution 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. The mediator's fee or time charge rate will be established at the time of selection or appointment. The expenses of witnesses for either side, if any, shall be paid by the party providing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator 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 nor other proceedings while the mediation proceeding is pending; however, a party may withdraw at any time from the mediation proceeding by providing written notice to the mediator and to the other party.

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) calendar 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 written notice of withdrawal from the proceeding. The mediator shall apply all applicable laws and rules of procedure, if any, 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. In addition to the foregoing and except as noted below, nothing contained herein is intended to constitute a consent or agreement on the part of Owner or Contractor to be subject to participate in any legal proceeding to resolve any controversy, claim or dispute arising out of or relating to this Contract or any alleged breach thereof.

**§8.3** In the event a contract dispute cannot be resolved as a result of mediation, the parties agree that venue shall be proper in the U.S. District Court for the Southern District of Florida, Broward County Division; or the Florida Circuit Court for the 17th Judicial Circuit, both with applicable appellate jurisdiction thereafter if required.

**§8.4** In the event that either of the parties hereto commences a lawsuit or other legal proceeding against the other party to enforce the provisions of this Contract or as a result of the other party's alleged breach thereof, the non-prevailing shall pay the reasonable attorney's fees and court costs incurred by the prevailing party. In the event that Owner is charged with a breach of this Contract, and all other conditions precedent to the assertion of a claim or the filing of suit have been fully met, the complaint or charging document filed by the non-tribal party shall set forth each and every fact and shall include, by way of attachment, each and every document upon which its allegations of breach are predicated. Each and every factual allegation contained in the complaint or charging document must be verified under oath.

**§8.5** It is understood and agreed that by executing this Contract, Owner does not waive, limit or modify its sovereignty or its tribal sovereign immunity from suit or from the assertion of any claim against it in any court or tribunal whatsoever unless the Tribal Council of the Seminole Tribe of Florida duly enacts an ordinance or a resolution in legal session authorizing a limited waiver of tribal sovereign immunity which conforms, in form and in substance, to the requirements of Tribal Ordinance C-01-95 regarding tribal sovereign immunity. Any limited waiver of the sovereign immunity of the Seminole Tribe of Florida shall also be subject to the following:

a. The limited waiver shall be based solely upon a claim that Owner has materially breached its obligations under the terms and conditions of this Contract.

b. The limited waiver may only be asserted by the party in direct privity with Owner. It shall not be assignable.

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c. The limited waiver shall not be effective unless and until the parties have first exhausted the dispute resolution procedures set forth in this Article 8. The limited waiver shall be limited to actual damages which have been incurred through the date of any claim asserted. The limited waiver of tribal sovereign immunity shall not pertain to any claim for punitive damages.

**§8.6** Under no circumstances will any award of damages or settlement make available to the non-tribal party access to any tribal assets which are not otherwise available as a matter of general law. Additionally, nothing contained herein shall be read to constitute a pledge of assets or an agreement to allow levy and execution against any specific asset of Owner in the event that a judgment is rendered against Owner.

## ***ARTICLE 9***
## TERMINATION OR SUSPENSION OF CONTRACT

### §9.1 TERMINATION BY CONTRACTOR

**§9.1.1** If Owner should fail without justification to make payments to Contractor for a period of thirty (30) calendar days from the date Contractor's Application for Payment is certified by Engineer, Contractor, upon seven (7) calendar days' written notice to Owner and Engineer (during which period Owner fails to remedy such condition), may terminate this Contract and recover from Owner the amounts to which Contractor would be entitled had Owner terminated this Contract for convenience pursuant to Section 9.4 below.

### §9.2 SUSPENSION BY OWNER

**§9.2.1** Notwithstanding the provisions of Section 9.1, upon ten (10) calendar days' written notice to Contractor, Owner may, for any reason or for no reason, suspend the Work for such period of time (not to exceed six (6) months in the aggregate) as Owner may desire. Such period of suspension shall continue until Owner terminates the period of suspension by further written notice to Contractor. Contractor shall have the right to terminate the Contract in writing after six (6) months of total suspension. If such period of suspension shall exceed thirty (30) consecutive calendar days or sooner if Owner agrees in writing, Contractor may remove any of its personnel from the Project. In the event Owner shall terminate the period of suspension after Contractor has removed any of its personnel from the Project pursuant to this Section, such personnel shall be replaced with personnel of similar training and experience acceptable to Owner. No action taken by Owner hereunder shall affect any of the other rights or remedies of Owner contained in this Contract. Notwithstanding the agreement contained in Section 15.1 below, in the event of a suspension pursuant to this Section, Contractor shall be entitled to an equitable adjustment to the GMP to cover the reasonable bona fide direct costs of suspension and remobilization of Contractor's and any Subcontractor's forces; provided however that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which Contractor is responsible.

### §9.3 TERMINATION BY OWNER FOR CAUSE

**§9.3.1** If Contractor fails to perform any of its obligations under this Contract, Owner may, after giving Contractor five (5) calendar days' written notice, during which period Contractor fails to evidence to Owner's reasonable satisfaction a good faith effort to perform and make good such deficiencies, perform or employ others to perform such Work and Owner shall recover from Contractor to the extent such costs exceed the amount that would have been paid to Contractor had Contractor performed and made good such deficiencies.

**§9.3.2** If Contractor is adjudged bankrupt, or if Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if Contractor refuses or fails (except in cases for which extension of time is provided) to supply or cause to be supplied enough properly skilled workmen or proper materials, or if Contractor fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction, or otherwise fails to perform, without legal justification, a material obligation under

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this Contract.

**§9.3.3** If Contractor repeatedly fails to perform its obligations until a receipt of notice from Owner as provided in Section 9.3.1, then, after giving Contractor and its surety, if any, five (5) calendar days' written notice, Owner may (a) terminate the employment of Contractor and take possession of the Project Site and of all materials, equipment, tools, construction equipment and machinery thereon purchased by Contractor for the Project as Cost of the Work and previously paid for by Owner, (b) accept assignment of Subcontracts pursuant to Section 23.3 of the General Conditions and (c) finish the Project by whatever method Owner may deem expedient. In such case,

**§9.3.4** Contractor shall not be entitled to receive any further payment until the Project is finished and it is mutually agreed or judicially determined whether or not Contractor shall be liable to Owner for any additional costs incurred by Owner as a result of Contractor's breach of its obligations under this Contract. Alternatively, at Owner's option Owner may supplement Contractor's work force and back charge the costs thereof.

**§9.3.5** No action taken by Owner under this Article 9 shall affect any of the other rights or remedies of Owner granted by this Contract or by law; or relieve Contractor from any consequences or liabilities arising from such acts, omissions, or deficiencies.

**§9.4 TERMINATION FOR CONVENIENCE BY OWNER**

**§9.4.1** Owner shall have the right for any reason, or for no reason, to terminate this Contract for Owner's convenience by giving to Contractor ten (10) calendar days' written notice thereof. On the date of the termination by Owner of this Contract and except as otherwise herein provided as to any liability for any breach by Contractor of the terms and provisions of this Contract on or prior to the date of termination, this Contract and the rights of the parties hereunder shall cease and terminate, and Contractor shall be entitled to the compensation provided for in Section 9.4.2 below.

**§9.4.2** In the event Owner terminates this Contract for convenience pursuant to this Section 9.4 (and not for "cause") after commencement of and prior to completion of the Construction Phase, Owner shall reimburse Contractor for any unpaid costs within the GMP actually expended by Contractor under Article 4, plus such an amount as shall be due and owing pursuant to the terms of this Contract for Work performed prior to the time of such termination. Owner shall not, however, be obligated to pay Contractor anything for the Work not performed or the fee Contractor would have earned on the unperformed Work. In the event Owner terminates this Contract for convenience at the end of the Preconstruction Phase and after receipt of the GMP Proposal but prior to commencing the Construction Phase, Owner shall reimburse Contractor an amount equal to 1.25% of the proposed GMP amount for Preconstruction Services performed, unless the parties have agreed to a Preconstruction Phase Fee under Paragraph C, Part I of the Contract.

## ***ARTICLE 10***
## ASSIGNMENT

**§10.1** Contractor shall not assign its interest in this Contract or the proceeds thereof without the prior written consent of Owner, which may be withheld by Owner in its sole discretion.

**§10.2** Owner shall have the right to assign this Contract upon written consent of Contractor and Contractor shall not unreasonably withhold that consent. Contractor shall have five (5) calendar days from receipt of a notice of such assignment to respond in writing to the proposed assignment. Failure to do so shall be deemed consent to the assignment. The foregoing notice shall set forth the fact that Contractor's failure to respond to such notice within five (5) calendar days shall be deemed consent to the assignment.

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**§10.3** As provided in, and subject to, the General Conditions, Owner shall have the right to assign this Contract to its existing and future lenders, and Contractor shall execute consents to such assignments.

## *ARTICLE 11*
## INSURANCE AND BONDS

**§11.1 BONDS**

**§11.1.1** At Owner's option Contractor shall furnish to Owner Performance and Payment Bonds; including the satisfactory performance of all of Contractor's obligations under the Contract, including warranty obligations and liquidated damages.

**§11.2 PERFORMANCE AND PAYMENT BOND REQUIREMENTS**

**§11.2.1** 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.

**§11.2.2** The bonds shall (1) name as additional obligees: Owner, any designee of Owner and affiliates, any construction lender(s) of (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.

**§11.2.3** 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.

**§11.3 CONTRACTOR'S LIABILITY INSURANCE**

**§11.3.1** Contractor shall purchase and maintain the following insurance to protect it, Owner, Owner's Construction Manager (if any), and their respective direct or indirect subsidiaries and/or affiliates, including their respective officers, directors, shareholders, partners, consultants, agents, servants, workmen and employees from the following Claims which may arise out of or as a result of the operations under this Contract by Contractor, Subcontractor, or any person directly or indirectly employed by or acting for Contractor or its Subcontractor. This coverage may be a combination of underlying and umbrella policies, but without any gaps:

**§11.3.1.1** Claims for damages due to personal injury, sickness, disease, or death of any person with limits of not less than ten million dollars ($10,000,000).

**§11.3.1.2** Claims for damage or destruction of Property (other than to the Work itself) including loss of use therefrom with limits of not less than ten million dollars ($10,000,000);

**§11.3.1.3** Claims under Workers' Compensation, Disability Benefits, and other similar employee benefit acts which are applicable to the Work to be performed. Workers' Compensation Insurance shall include all workers of Contractor and of those firms working under Contractor. Employer's liability shall be included and shall cover the operations of Contractor and Subcontractors of all tiers performed in connection with the Work at or emanating from the Project. Subcontractors shall not have exemptions.

**§11.3.1.4** Claims for damages because of Personal Injury or Death of any person or property damage arising out of ownership, maintenance, or use of any motor vehicle in an amount not less

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than Ten Million Dollars ($10,000,000) Combined Single Limit. Business Automobile Liability coverage shall include employer's non-owned and hired car coverage.

**§11.3.2** Such insurance shall include Commercial General Liability on an occurrence form for Claims for damages resulting in or arising from:

**§11.3.2.1** Personal injury, sickness, disease, or death of any persons (beyond workers comp and employers' liability), and

**§11.3.2.2** Property damage, including loss of use therefrom, subject to a Ten Million Dollar ($10,000,000) per occurrence limit for personal injury and property damage, except that the aggregate limit for Products/Completed Operations coverage shall be Ten Million Dollars ($10,000,000).

**§11.3.2.3** Such coverage shall also include, but not be limited to: Comprehensive Form, Completed Operations, Explosion, Collapse and Underground Hazard, Products/Completed Operations Hazard, Contractual Liability (including coverage for Indemnity Clauses under the Contract Documents), Broad Form Property Damage, Independent Contractors and Personal Injury (Groups A, B and C), and Legal Defense Costs (in addition to, and not within, limits of coverage).

**§11.3.3** The liability policies maintained by Contractor shall name Owner, Owner's Representative, and Owner's subsidiaries and/or affiliates, including their respective officers, directors, shareholders, partners, architects, consultants, agents, servants, workmen and employees, as additional insureds, and shall contain a provision that coverage afforded under the policies will not be canceled nor failed to be renewed without at least sixty (60) calendar days prior written notice given to Owner. A copy of the comprehensive general liability policy will be given to Owner prior to start of construction. All insurance companies must be licensed to do business in the State of Florida or eligible surplus lines insurers in the State of Florida and shall have a Current Best Rating of A-VII. There shall be no limiting of coverage from claims by additional named insureds against other insureds.

**§11.3.4** Original Certificates providing evidence of Insurance showing such coverage to be in force shall be filed with Owner prior to the commencement of the Work and renewals furnished prior to expiration of any coverage herein.

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**§11.4 INSURANCE TO BE FURNISHED BY SUBCONTRACTORS**

**§11.4.1** Each Subcontractor shall be required to maintain the following insurance in amounts not less than those specified below, except as approved in writing by Owner or its agent. All of Subcontractors' liability coverage shall name Owner as an additional named insured (but for Workers Compensation Coverage where the Workers Compensation is a sole remedy to a claimant) and may not prohibit claims from additional named insureds.

(a) Workers' Compensation and Employers Liability:

(i) Statutory Workers' Compensation (including occupational disease).

(ii) Employers Liability Insurance with a limit of at least Five Hundred Thousand Dollars ($500,000).

(b) Commercial General Liability (CGL) including completed operations with a combined single limit for Personal Injury and Property Damage (including advertising injury) of at least One Million Dollars ($1,000,000) per occurrence and least Two Million Dollars ($2,000,000) in the aggregate.

The coverage may be provided through a combination of primary and umbrella/excess liability policies.

(c) Business Automobile Liability, Comprehensive, Owner, Hired, Non-owned with limits of Five Hundred Thousand Dollars ($500,000) combined single limit each occurrence.

**§11.4.2** Any Subcontractor involved in demolition, abatement and/or removal of any asbestos related portions of the Project shall, in addition to the requirements set forth in Section 11.4.1 above, be required to maintain appropriate environmental insurance coverage.

**§11.4.3** Any type of insurance or any increase of its limits of liability not described above that Contractor requires for its own protection, or on account of statute, shall be its own responsibility and at its own expense.

**§11.4.4** The carrying of the insurance described shall in no way be interpreted as relieving Contractor or any Subcontractor of any responsibility or liability under this Contract.

**§11.4.5** Should any Subcontractor engage a Sub-subcontractor, the same conditions applicable to the Subcontractor under this Contract shall apply to each Sub-subcontractor.

**§11.4.6** Professional Liability Insurance (If design obligations undertaken). Contractor and any Subcontractors or consultants performing design services under this Contract shall maintain professional liability coverage for negligent acts, errors or omissions arising out of the performance of any design services or functions under this Contract. The minimum limits of liability under this professional liability coverage shall not be less than One Million Dollars ($1,000,000). The coverage or policy shall be for an initial period of three (3) years with a subsequent two (2) year extension. Coverage shall include a professional services contractual liability coverage endorsement. Coverage shall be primary and shall be non-contributing with any insurance that may be maintained by Owner, Manager, or any affiliated companies. Contractor shall be responsible for any deductibles and/or inadequate (gaps in) coverage.

**§11.4.7** Contractor may maintain Subcontractor default insurance for its Subcontractors on the project in lieu of performance bonds(s). Notwithstanding the foregoing provisions of Article 11, the insurance coverage amounts set forth on **Exhibit F** shall control to the extent of any direct discrepancy with the coverage amounts in Article 11.

**§11.5 PROPERTY INSURANCE**

**§11.5.1** Unless otherwise provided by Owner, Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications, comprising total value for the entire Work 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 Substantial Completion of the Work. This insurance shall include Owner, Contractor, Subcontractors and Sub-subcontractors as insureds without limitation. Owner and Owner's assignee or transferee shall provide full replacement value property insurance for Owner's property other than the Work and for the Work following Substantial Completion.

**§11.5.2** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, water damage, windstorm, falsework, testing and startup, temporary buildings and debris removal

SAMPLE

including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer's and Contractor's services and expenses required as a result of such insured loss.

**§11.5.3** If the property insurance requires deductibles, Owner shall pay costs not covered because of such deductibles. Owner shall also be responsible for deductibles related to any named windstorm events.

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

**§11.5.5** Partial occupancy or use in accordance with Section 28.3 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.

**§11.5.6** 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.

**§11.5.7** 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.

**§11.5.8** Owner shall have power to adjust and settle a loss with insurers unless one of the other insureds 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 Section 28.3.

## ***ARTICLE 12***
## INDEMNITY AND WAIVER OF SUBROGATION

### §12.1 INDEMNIFICATION

**§12.1.1** To the fullest extent permitted by law Contractor shall indemnify and hold harmless Owner, Engineer, Owner's and 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. This limited form indemnification provision does not extend to provide indemnification to the Indemnified Parties for their own negligence, wrongful acts, or omissions. This indemnity shall be limited to the commercially reasonable sum of two million dollars per occurrence.

**§12.1.2** Except to the extent covered by insurance, Contractor, as a material part of the consideration of this Contract, waives on its behalf, except to the extent occasioned by the willful misconduct or grossly negligent acts of Owner, its members, agents or employees and the other Indemnitees, all claims and demands against Owner for all loss, damage, injury, sickness or death of any person, and all other claims of any kind of character to any person or property directly or indirectly arising out of or resulting from Contractor's negligence, wrongful acts or omissions at the Project Site or the performance of this Contract or the commencement, prosecution and completion of the Work.

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**§12.1.3** The obligations of Contractor under this Section 12.1 shall not extend to the liability of Engineer, Engineer's consultants, agents or employees of any of them, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by Engineer, Engineer's consultants, agents or employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

**§12.1.4** Contractor shall deliver to Owner all documents, reports, and other information reasonably available to Contractor which are requested of Owner by any lender and shall reasonably cooperate with Owner and any lender to the fullest extent possible.

**§12.1.5** Contractor shall promptly pay all fees, taxes, deposits, charges, damages, penalties or interest that may be claimed against or paid by Owner on account of any failure of Contractor or its Subcontractors of any tier to comply with any laws, statutes, ordinances, codes or regulations relating to the Work (including specifically those pertaining to permits, licenses or notices) and any liens or claims arising out of fringe benefit collective bargaining trust fund claims with respect to the Work. Contractor shall make, and shall cause its Subcontractors to make, all payments required by law or under this Contract when and as required on account of the Work to any governmental authorities (whether taxes or other payments) or to any pension or other fund, trust or plan (whether or not established pursuant to a collective bargaining agreement) and shall promptly furnish to Owner satisfactory evidence of such payments.

**§12.2 WAIVER OF SUBROGATION**

**§12.2.1** Contractor waives all rights against (a) Owner and each of their agents, officers, directors, shareholders and employees, (b) Engineer, and separate contractors, if any, and their Subcontractors, Sub-subcontractors, agents and employees and (c) any other person or entity using or occupying any portion of the Project with Owner's knowledge and consent for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article 11 or any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by Owner as trustee.

**§12.2.2** Contractor waives all rights against Owner for any loss or damage to any equipment used in connection with the Project and covered by any insurance. Contractor shall require waivers from all Subcontractors if obtainable.

**§12.2.3** If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, Contractor will cause them to be so endorsed at its expense.

## ***ARTICLE 13***
## COMPLIANCE COMMITTEE REQUIREMENTS

**§13.1** Contractor acknowledges that, as a result of Owner, Owner's Manager, or Manager's affiliates being licensed or qualified as a licensed casino owner/operator in various jurisdictions, Owner and/or Manager is required to conduct appropriate due diligence inquiries concerning any material transaction in which Owner and/or Manager engages and that the transactions envisioned by this Contract fall within the class of transactions which require that Owner and/or Manager conduct such due diligence inquiries regarding Contractor. Based on the foregoing, Contractor agrees that, upon Owner's request, Contractor shall make such disclosures as are necessary or desirable for Owner to conduct such inquiries of Contractor as Owner deems appropriate to conduct the required due diligence inquiries. Contractor further agrees that, should the results of such due diligence inquiry prior to the start of work be unsatisfactory to Owner, Owner shall have the right to demand that Contractor cure such items disclosed in the due diligence inquiry which Owner

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deems unsatisfactory and, failing such cure and within five (5) calendar days of demand therefor, Owner shall have the right to terminate this Contract without any liability of Owner to Contractor; any cure attempted by Contractor must (a) be immediately undertaken by Contractor, and (b) be pursued with dispatch and diligence. If the disclosure is requested after work has started and Contractor is unable to cure, then the contract may be terminated for convenience.

## ***ARTICLE 14***
## DAMAGES

### §14.1 NO DAMAGES FOR DELAY

**§14.1.1** Contractor agrees to prosecute the Work and to require all trade contractors to prosecute the Work in a timely and proper method and manner so as to meet the dates reflected on the Contract Schedule, including the Substantial Completion Date. In the event that Contractor is delayed in the prosecution of the Work, then Contractor may seek a time extension in accordance with Article 5 under circumstances entitling Contractor to a time extension under this Contract, Contractor agrees that such time extension, if any, is its sole and exclusive remedy for any damages caused by delays. Contractor further agrees that Owner shall not be liable for any monetary damages or other schedule related damages including damages for acceleration, or disruption of the Work regardless of the cause of such damages. Owner shall not be liable for home office overhead expense or consequential damages should the Work be delayed, suspended, accelerated, or disrupted for whatever reason, which consequential damages are waived. Contractor shall not be liable for consequential damages of Owner other than liquidated damages. At Owner's option, Contractor may be ordered by Owner to demobilize its forces because the Project is delayed or suspended.

### §14.2 OWNER'S DAMAGES FOR LATE COMPLETION

**§14.2.1** The Parties agree that the provisions of this Contract concerning the required Completion Dates are material terms of the Contract, the breach of which will entitle Owner to recover damages from Contractor to reimburse it for its loss. Due to the uncertainty and difficulty in calculating the loss of revenues and other damages Owner will suffer should Contractor fail to timely complete the Project, Owner and Contractor mutually agree that in the event Contractor fails to achieve Substantial Completion by the required Substantial Completion Date above (as that date may be adjusted in accordance with the terms of the Contract), Contractor shall pay to Owner, as liquidated damages and not as a penalty, the sum specified in Paragraph D of Part I per calendar day for each calendar day thereafter until Substantial Completion has been achieved. The Parties agree and acknowledge that the purpose of this provision is for the Parties to agree in advance upon a reasonable approximation of the damages Owner will incur if Substantial Completion of the Project is not timely achieved. The Parties agree and understand that any assessment by Owner of liquidated damages or payment by Contractor to Owner of liquidated damages is to compensate Owner for any damages arising out of Contractor's delay in achieving the required Substantial Completion Date and that the assessment of liquidated damages is intended to be Owner's exclusive remedy for any and all damages that arise out of a delay in achieving Substantial Completion, but does not waive any other claims Owner may have for any other breach of this Contract or for defective or improper workmanship. If and to the extent Owner is entitled to receive liquidated damages, Owner may withhold same from any payments that would otherwise be due Contractor. If Contractor fails to achieve final completion within One Hundred Twenty (120) calendar days of substantial completion, Owner may, at its election, have the work done by others and back charge Contractor the actual cost of same plus 15% administrative fee.

## ***ARTICLE 15***
## UNFORESEEN SUBSURFACE CONDITIONS

**§15.1** Given the nature of the Project, both parties expressly agree and understand that the costs and time required to complete the Project could vary significantly in the event subsurface conditions are encountered which are materially different than those anticipated. Contractor will provide for such conditions by

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inclusion in the GMP and in the Project Schedule a contingency which Contractor, in its best professional judgment after reviewing applicable geotechnical and subsurface condition reports made available to Contractor, deems sufficient to cover the time and costs associated with any such conditions indicated in the reports which may be encountered. Should an unanticipated subsurface condition of any kind of significant magnitude be encountered that exceeds the initial allowance or contingency amount, such discovery will not be the basis of an increase or decrease in the GMP, but Contractor may utilize any other Contractor's allowance and/or Contractor's contingency that may be included in the GMP at Contractor's discretion to mitigate such unforeseen discovery. Contractor shall include Contingency Funds (the CM Contingency, to be used at Contractor's discretion but reported to Owner monthly) in the GMP for items such as, but not necessarily limited to, unforeseen conditions, material cost escalation, insurance deductibles, permitting or governing agency requirements, completion of certain design elements, material testing, specialty design or engineering, special consultants, interpretation, or coordination issues. Contractor's Contingency will be separate from Owner's Contingency Fund, which Owner may choose to provide to Contractor to include in the GMP to cover cost of items that may arise during the course of the Project.

## ***ARTICLE 16***
## CONTRACTOR'S DESIGN RESPONSIBILITIES

**§16.1** To the extent Contractor provides – either itself or through a Subcontractor or appropriate consultant, any design services in connection with the Project, in addition to its other responsibilities under this Contract, Contractor also assumes full responsibility for that design in its role as a Contractor, to be performed to Owner's satisfaction and through licensed professionals (if and to the extent professional licenses are required). Contractor warrants to Owner that all designs provided will be complete, accurate, fully operational, fully coordinated internally and with the overall Project design, and in accordance with professional standards for the design of such Work. Such design shall be in compliance with all applicable laws, codes, regulations, and standards. Contractor shall include, as a reimbursable cost within the GMP, all costs associated with this design Work, including all associated architectural and engineering fees.

**§16.2** Contractor and any design professionals working under Contractor shall carry professional liability insurance in an amount and form acceptable to Owner and in compliance with the requirements of this Contract for design Work.

## ***ARTICLE 17***
## INTENT AND PRECEDENCE OF CONTRACT DOCUMENTS

**§17.1** The Contract Documents are intended to be read together in their entirety and complementary with one another, with anything required by one required by all. In the event of any conflicts within the Contract Documents that cannot be reconciled by a reasonable interpretation, the greater obligation to Contractor shall control. This agreement has been freely negotiated such that no provision shall be interpreted more strictly against either party as a result of drafting.

## ***ARTICLE 18***
## LABOR RELATIONS

**§18.1** Contractor will exert reasonable and diligent effort to promote harmony and appropriate measures to keep the Project free of labor disputes, conflicts, and protests, and to protect Owner from same.

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## *ARTICLE 19*
## PROJECT-SPECIFIC REQUIREMENTS

**§19.1** The Contract requirements contained in this Article 19 address specific needs and requirements which are unique to this Project. To the extent there are any conflicts or inconsistencies between this Article and any other provision of the Contract, this Article shall take precedence.

**§19.2** Owner is a federally recognized Indian Tribe and is therefore qualified for non-taxpaying status with respect to the application of Florida state sales tax and use tax on the purchase of tangible personal property if certain criteria are met. This Project is being structured to take advantage of the non-taxpaying status of Owner. As more particularly set forth in Part III of this Contract, Contractor shall identify items which may be purchased directly by Owner or in some other manner in order to avoid payment of sales and use taxes and shall cooperate fully with Owner and take all steps necessary to avoid the imposition of sales and use taxes for such items.

**§19.3** Reserved.

**§19.4** Contractor acknowledges that Owner and Manager have certain agreements and obligations in connection with the Project in addition to the obligations created by this Contract (herein "Obligations"). These Obligations include but are not necessarily limited to any obligations imposed by the Indian Gaming Regulatory Act of 1988, the National Environmental Policy Act, Article III of the Americans With Disabilities Act, and any other applicable federal laws.

**§19.5** In the event that any prehistoric, historic, or paleontological resources are discovered during construction- related earth-moving activities, all work within 50 feet of the resources shall be halted and Owner shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant by the qualified archaeologist, then representatives from Owner and the qualified archaeologist and/or paleontologist would meet to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist or paleontologist according to current professional standards.

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# SECTION B. GENERAL TERMS AND CONDITIONS

## *ARTICLE 20*
## CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

**§20.1** The intent of the Contract Documents is to describe a functionally complete facility, and it is intended that Contractor shall furnish all labor, materials, tools, equipment, supervision, and other items necessary for the proper execution and completion of the Work in accordance therewith, including all Work incidental to or reasonably inferable from the Contract Documents as being necessary to produce the intended results (unless it is specifically indicated in the Contract Documents that such Work is to be performed by others), and to complete the Work in a satisfactory manner, ready for use, occupancy and operation by Owner. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Omissions from the Contract Documents or the mis-description of details of Work which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work or mis-described details of the Work, which shall be performed as if fully and correctly set forth and described in the Contract Documents.

**§20.2** 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. Should Contractor discover any inconsistency in the Drawings, or between the Drawings and the Specifications, Contractor shall promptly advise Engineer and Owner of such inconsistency. Contractor is responsible for coordination of all the work among Contractor's own forces, Subcontractors, and vendors.

**§20.3** 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. Stated dimensions shall take precedence over scaled dimensions and large-scale Drawings shall take precedence over small-scale Drawings. Where a typical or representative detail is shown on Drawings, such details shall constitute the standard of workmanship and materials throughout the corresponding portions of the Work. Where necessary, Contractor refer to its detail for use in said corresponding portions of the Work in a manner that is satisfactory to Engineer and Owner. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

(a) The greatest obligation to Contractor, or (b) In the case of an inconsistency between Drawings and Specifications or within any Contract Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with Engineer's interpretation. Notwithstanding the foregoing or anything else in this Contract to the contrary, in the event a conflict, discrepancy or inconsistency between or within any of the Contract Documents was not, at the time of execution of the Contract, reasonably discoverable by Contractor in its role as a contractor and not a design professional, then any increase in cost and time which results from Engineer's interpretation shall be covered by a change order.

**§20.4 OWNERSHIP AND USE OF THE DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

All Drawings, Specifications and copies thereof furnished by Engineer are and shall remain the property of Owner, subject to Engineer's reserved rights with respect to standard details. Such documents shall not be used on any other project without the prior consent of Owner. With the exception of one (1) contract set for each party to the Contract, such documents are to be returned or suitably accounted for to Owner on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyright or other reserved rights. Drawings issued by Engineer concerning clarifications, proposed changes (in the form of "bulletins," or clouding on revised drawings) or changes will be in the form of a reproducible print of each such drawing. Contractor shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work. Contractor, its employees, and all other persons involved in the Work, whether on Site or not, shall retain in confidence and shall not, without Owner's prior written authorization, copy or disclose to any third party any information of a confidential nature obtained from Owner, whether obtained directly or deduced from other confidential information.

## ***ARTICLE 21***
## OWNER

**§21.1 INFORMATION AND SERVICES REQUIRED OF OWNER**

**§21.1.1** Owner shall furnish information or services under Owner's control with reasonable promptness to avoid delay in orderly progress of the work. 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.

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**§21.1.2** Unless otherwise provided in the Contract Documents, Owner will furnish, free of charge, such copies of Drawings and Specifications as are reasonably required by Contractor for execution of the Work. Any additional copies required by Contractor's Subcontractors, for bid packages, or for other purposes will be reproduced by Contractor.

**§21.2 OWNER'S RIGHT TO STOP THE WORK**

**§21.2.1** If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 10.2 or fails to carry out Work in accordance with the Contract Documents, Owner, by written order signed by Owner's Representative, may order 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. This Owner's right shall be in addition to and not in restriction or derogation of Owner's rights under Article 10 hereof, nor shall the exercise of this right by Owner relieve Contractor of any of its responsibilities and obligations pursuant to the Contract Documents. If, after consultation with Engineer, suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the quality of the Work if the Work were continued, Owner may suspend the Work by written notice to Contractor. If Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, Contractor shall immediately notify Owner and Engineer of such belief and describe with particularity the reasons therefor.

**§21.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§21.3.1** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five (5) calendar 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 immediately and without prejudice to other remedies Owner may have, correct such deficiencies. Owner shall have the right, but not the obligation, to use Contractor's Subcontractors in executing such Work. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter owed to Contractor the cost of correcting such deficiencies, including compensation for Engineer's Additional Services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter owed to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner upon demand. The rights stated in this Article 21 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

## ***ARTICLE 22***
## CONTRACTOR

**§22.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§22.1.1** Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner and shall at once report to Engineer errors, inconsistencies or omissions discovered or any variance observed by Contractor from applicable laws, statutes, ordinances, building codes, rules, regulations or any lawful orders of any applicable governmental body, or public or quasi-public authority or variance from or conflict with ongoing conditions at the Project Site. If Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to Engineer and Owner, Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

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**§22.1.2** 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.

**§22.1.3** Contractor is responsible for ensuring that the Work of the Subcontractors is being performed in accordance with the Contract Documents and will guard Owner against defects and deficiencies in the Work of the Subcontractors.

**§22.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§22.2.1** 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.

**§22.2.2** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor or claiming by, through or under Contractor and for any damages, losses, costs, and expenses resulting from such acts or omissions.

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

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

**§22.2.5** If any of the Work is required to be inspected or approved by any applicable public or tribal authority, Contractor shall cause such inspection to be performed or such approval to be obtained. No inspections performed or failed to be performed by Owner hereunder shall be a waiver of any of Contractor's obligations hereunder or shall be construed as an approval or acceptance of the Work or any part thereof.

**§22.2.6** Nothing contained herein shall be deemed to create any relationship between Contractor and Engineer or any other consultant of Owner. Nor shall anything contained herein be deemed to create any contractual relationship between Owner and any of the Subcontractors on the Project who are under contract with Contractor. Nor shall anything contained in this Contract be deemed to give any third party any claim or right of action against Owner or Contractor which does not otherwise exist without regard to this Contract. Owner shall be an intended third-party beneficiary of all subcontracts.

**§22.3 LABOR AND MATERIALS**

**§22.3.1** Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, supervision, materials, equipment, tools, construction equipment and machinery, 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. Contractor shall check all materials and labor entering into the Work and shall keep fully detailed accounts thereof.

**§22.3.2** 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

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skilled in tasks assigned to them and will not allow them in areas of the Project Site outside the Work area. Contractor acknowledges that the highest standard of discipline and order must be maintained recognizing the ongoing operations of the Project Site as an operating school campus.

**§22.3.3** Contractor (a) shall assure that its employees and Subcontractors work in harmony and do not interfere with Owner or Owner's other contractors and (b) shall use its best efforts to avoid any work stoppage, picketing, labor disruption or dispute involving the employees, contractors, subcontractors, laborers, or materialmen of Owner or any tenant or occupant of the Project Site and any unreasonable interference with the business of Owner or any tenant or occupant of the Project Site. In the event of a labor dispute, Contractor shall not be entitled to any increase in the compensation provided for pursuant to the Contract Documents.

**§22.4 WARRANTY**

**§22.4.1** Contractor warrants to Owner that materials and equipment furnished under the Contract will be new and of specified and good quality unless otherwise required by the Contract Documents; that the Work will be free from defects for a period of twelve months from Substantial Completion, or Owner occupancy, whichever first occurs, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved, may be considered defective. Contractor's warranty excludes damage or defect caused by abuse, improper or insufficient maintenance or improper Owner operation. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This Warranty is not limited by the provisions of Section 22.4.

**§22.5 TAXES.**

**§22.5.1** Owner is a federally recognized Indian tribe recognized by the State of Florida as being exempt from state sales tax and use tax and is therefore qualified for an exemption from Florida and all other state sales taxes on the purchase of tangible personal property if certain criteria are met. Contractor is responsible for paying any sales taxes that are incurred that are not under Owner's direct purchase as described below.

**§22.5.2** Contractor shall fully support Owner-Direct Purchasing (ODP) program as defined herein. All costs associated with Contractor's participation in Owner-Direct Purchasing Program including sales tax have been incorporated into the cost of this Contract, and no additional amounts will be paid to Contractor for its participation in this program. Contractor shall provide the total of sales tax included in the Contract by separate line item in its cost breakdown. Contractor agrees to cooperate with Owner and Owner's authorized representative to implement a direct purchase program to permit Owner to take advantage of its tax-exempt status in purchasing construction materials. Owner has the option to purchase materials and equipment (Owner Purchased Materials) included in the scope of work under the Contract directly from the supplier(s) and will hold title to all such direct purchased materials and equipment.

**§22.5.3** Contractor shall require all Subcontractors and direct suppliers to submit a list of supplies and suppliers along with their bids for consideration by Owner as possible Owner-direct purchased materials. All such bids shall represent the best possible purchase price that the Subcontractor or its Sub-subcontractor could negotiate with the material or equipment suppliers including any requirements of Owner's Purchase Order terms and conditions and delivery requirements. Any optional prices should be included in the bid. Owner shall respond within five (5) calendar days of receipt of each bid if it elects to include that Subcontractor's or direct supplier's materials or equipment as part of Owner purchased materials. Owner shall provide a copy of its Certificate of Consumer's Exemption to Contractor for distribution to each Subcontractor or direct supplier as required for Owner-Direct Purchasing program and shall furnish a standard credit application package to Contractor as required for the purpose of Owner-Direct Purchasing program. The package will include Owner's standard Purchase Order terms and conditions. Contractor shall

SAMPLE

notify Owner in the event any supplier fails to qualify Owner to make purchases on a net 30-day basis within two weeks of the submittal of Owner's standard credit application package. Contractor shall assist Owner in preparation of the Purchase Order and review the same with Subcontractors and suppliers for inclusion of all essential requirements the same as if the Subcontractor or Contractor were purchasing the materials and equipment. All delivery coordination, storage, labor handling, insurance, and any other aspects of such direct purchase transactions shall be the responsibility of Contractor. Contractor's fee shall apply to such direct purchases.

**§22.5.4** The Purchase Order will be issued in Owner's name, signed by its authorized representative, and provided to Contractor for submittal to the supplier for acceptance and execution. One fully executed copy of the Purchase Order to be returned to Owner. Owner shall remit payment directly to the supplier. The amount of all direct purchases together with the applicable sales tax shall be a deductive change order to the Contract.

**§22.6 PERMITS, FEES, AND NOTICES**

**§22.6.1** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for the applicable building permit and other permits and applicable 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. Contractor shall also keep Owner informed of any changes in approvals obtained or permits required for the Project.

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

**§22.6.3** It is Contractor's responsibility to diligently review the Contract Documents as a contractor, not as a designer for compliance in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. 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. Contractor shall promptly correct the problem giving rise to the notice to the satisfaction of the governing body and in accordance with the plans and specifications and shall procure the discharge or cancellation of any notice of violation issued by the applicable building department or any other applicable governmental authority arising from the Work. Contractor does not assume Engineer's responsibilities for design work not provided by Contractor.

**§22.6.4** If Contractor or any Subcontractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, building codes, and rules and regulations without written acknowledgement by Engineer and Owner, Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

**§22.7 ALLOWANCES**

**§22.7.1** Contractor shall include in the "Guaranteed Maximum Price" all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct, but Contractor shall not be required to employ persons or entities against which Contractor makes reasonable objection.

**§22.7.2** Unless otherwise provided in the Contract Documents:

(a) Materials and equipment under an allowance shall be selected promptly by Owner to avoid delay in the Work.

SAMPLE

(b) Allowances shall cover the cost to Contractor of materials and equipment delivered at the Project Site, all permits and fees, and all required taxes, less applicable trade discounts.

(c) Contractor's costs for unloading and handling at the Project Site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

(d) Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 22.7.2(b), and (2) changes in Contractor's costs under Section 22.7.2(c).

**§22.8 SUPERINTENDENT AND PROJECT MANAGER**

**§22.8.1** Contractor shall employ a competent Superintendent, Project Manager, and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The Project Manager shall represent Contractor, and communications given to the Project Manager 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. The list of all supervisory personnel, including the Project Manager and Superintendent that Contractor intends to use for the Project and a chain of command organizational chart shall be submitted to Owner for its approval. Contractor shall not engage or change supervisory personnel or utilize an organization and chain of command other than as approved by Owner in writing. The Superintendent and Project Manager shall be submitted to the approval of Owner, and Contractor shall not replace the Superintendent or the Project Manager without the prior written consent of Owner.

**§22.9 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§22.9.1** Contractor, promptly after being awarded the Contract, shall prepare, and submit for Owner's approval Contractor construction schedule for the Work (the "Construction Schedule") which consists of the Contract Completion Date and the Project Schedule. The Schedule shall be a critical path network, not to 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. Float, slack time, or contingency within the Schedule (i.e., the difference in time between the Project's early completion date and the required Contract Completion Date) is not for the exclusive use of either Owner or Contractor but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract Completion Date. Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract Completion Date. Since float time within the Schedule is jointly owned, it is acknowledged that Owner caused delays on the Project may be offset by Owner caused timesaving (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to Contractor, etc.). In such an event, Contractor shall not be entitled to receive a time extension or delay damages until all Owner caused timesaving are exceeded and the Contract Completion Date is also exceeded.

**§22.9.2** Contractor shall prepare and submit to Owner within thirty (30) calendar days after Notice to Proceed and thereafter keep current, for Owner's approval, a schedule of submittals coordinated with Contractor's Schedule and allows Engineer reasonable time to review submittals.

SAMPLE

**§22.9.3** Contractor shall conform to the most recent Schedules.

**§22.9.4** Contractor shall prepare at least a monthly progress report in a form and in detail satisfactory to Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new Schedule, and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated current Project Schedule, and a listing and the status of all Change Orders, Modifications, bulletins, and other relevant documents.

**§22.9.5** Reserved.

**§22.9.6** Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as Owner requests. Progress of the Work shall be reported in detail with reference to construction Schedules. Each interested Subcontractor shall have in attendance a competent representative to report the condition of its Work and to receive information. At or before each such weekly progress meeting, Contractor shall deliver to Owner copies of Contractor's daily logs for the prior week's activities. Contractor is obliged to maintain a daily log listing for each day worked: all progress of the work, all perceived problems/defects/delays, all inspections made with name of inspector(s), all results of inspections made known, the number of Contractor and Subcontractor personnel present, and whether there was precipitation or other problematic weather.

**§22.10 DOCUMENTS AND SAMPLES AT THE PROJECT SITE**

**§22.10.1** Contractor shall maintain at the Project Site for Owner one (1) record copy of the Drawings, Specifications, addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction, and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. A final set of "As Built Drawings shall be collected from each major Subcontractor and prepared by Contactor which indicates the foregoing information and all deviations or changes from the design documents. These As-Built Drawings shall be readily available to Engineer and shall be delivered to Owner upon completion of the Work.

**§22.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

**§22.11.1** 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. Shop Drawings shall show the design, dimension, connections, and other details necessary to ensure that the Shop Drawings accurately interpret the Contract Documents and shall also show adjoining Work in such detail as required to provide proper connections with said adjoining Work. Where adjoining connected Work requires, Shop Drawings shall be submitted to Engineer for review so that connection can be checked.

**§22.11.2** Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate materials or equipment for some portion of the Work. Contractor shall submit Product Data to Owner and/or Engineer when necessary or required by Owner and/or Engineer to explain fully apparatus or equipment required by the Work. The Product Data shall be treated as Shop Drawings. Manufacturers' catalogue numbers alone are not acceptable as sufficient information or compliance with this requirement.

**§22.11.3** Sample are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples shall be submitted by Contractor simultaneously to both Owner and Engineer and shall be accompanied by a letter of transmittal to both, Owner and Engineer.

SAMPLE

Contractor shall number all transmittals. Data and/or manufacturers' certificates shall be referenced and forwarded with the letter of transmittal. Samples without accompanying test data or certificates will be returned without action. In the event that a range of variations in textures, graining, color, or other characteristics may be anticipated in finished materials, assemblies or elements of the Work, a sufficient number of Samples of such materials or product shall be submitted to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval of full range Samples shall be subject to rejection. Samples shall be submitted from the same source that shall actually supply the Project. Samples shall be of adequate size to show quality, type, color, range, finish, texture, and other specified characteristics. Samples of materials or products that are normally furnished in containers or packages that bear descriptive labels and/or application or installation instructions shall be submitted with such labels and/or instructions.

**§22.11.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate for those applicable portions of the Work the details and manner of performance Contractor proposes to use to conform to (and not change) the design concept expressed in the Contract Documents.

**§22.11.5** Contractor shall obtain, review, approve and submit to Engineer, with copies to Owner's Representative, Shop Drawings, Product Data, Samples, and similar submittals for the Work 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 made by Contractor, which Engineer determines are not required, may be returned without action.

**§22.11.6** Contractor shall not perform any portion of the Work for which Shop Drawings, Product Data, Samples, or similar submittals are appropriate as determined by Engineer until the respective submittal has been approved by Engineer. Such Work shall be in accordance with approved submittals.

**§22.11.7** 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; that it has checked to insure that Work contiguous with and having bearing on the Work shown on the Shop Drawings is accurately and clearly shown; that the equipment will fit into the assigned spaces; and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Contractor shall number transmittals consecutively and indicate the file number of the original submittal on any re-submittal. Each shop Drawing or sample and letter of transmittal shall contain the following information:

(a) The name of the Project.

(b) The name of Contractor.

(c) The name of the firm or organization and person or persons preparing the Shop Drawings.

(d) The date of submittal.

(e) The number of Shop Drawings and the number and date of each revision, if any.

(f) The applicable section of the Specifications.

(g) The applicable number of the Contract Drawing and detail.

SAMPLE

(h) The name of Subcontractor and/or supplier, manufacturer, fabricator, or processor.

(i) The trade designation and the grade or quality of the material or product.

(j) The specific identification of each sample.

**§22.11.8** Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by approval of Shop Drawings, Product Data, Samples, or similar submittals unless Contractor has specifically informed Engineer and Owner in writing of such deviation at the time of submittal and Owner has given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Owner's approval thereof.

**§22.11.9** Contractor shall call out and conspicuously identify, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Engineer on previous submittals.

**§22.11.10** Informational submittals upon which Owner is not expected to take responsive action may be so identified.

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

**§22.11.12** Following Engineer's review of each Shop Drawing, Product Data and Sample submission, Engineer will retain a copy and return the reviewed submission to Contractor with a stamp and signature affixed thereto annotated as follows:

(a) **"APPROVED"** means approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance.

(b) **"APPROVED AS NOTED – RESUBMISSION NOT REQUIRED," "REVIEWED, NO EXCEPTIONS,"** or **"REVIEWED, EXCEPTIONS NOTED"** means, unless otherwise noted on the Drawings, approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the submittal and in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance.

(c) **"NOT APPROVED – MAKE CORRECTIONS AND RESUBMIT"** or **"RE-SUBMITTAL REQUIRED"** means submittal shall be corrected to comply with the annotations/corrections on the submittal, and then resubmitted to Engineer. No Work based on such submittals shall be constructed, fabricated, or manufactured until re-submittal is approved.

(d) **"REJECTED – DO NOT RESUBMIT"** or **"REJECTED"** means that major deviations from the requirements of the Contract Documents exists in the submittal. No Work based on such submittals shall be constructed, fabricated, or manufactured. CONTRACTOR shall review the submittal in compliance with annotations and pursuant to all requirements of the Contract Documents and shall resubmit the submittal for approval.

SAMPLE

**§22.12 USE OF PROJECT SITE**

**§22.12.1** Contractor shall confine operations at the Project Site to areas permitted by applicable law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment.

**§22.13 CUTTING AND PATCHING**

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

**§22.13.2** 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, if required by Specifications and Drawings, shall make connections to materials or equipment furnished, set, and/or installed by other contractors. No Work connecting to such materials or equipment provided by other contractors shall be done without giving such contractors a reasonable length of time to complete their Work or until permission to proceed has been obtained from Owner. Contractor shall secure the shop detail Drawings from other contractors for such of their Work as is to be built into its Work, or to which it must make connection, and shall also measure for Owner any discrepancy or unsuitability relative to its own Work. Each contractor shall provide all openings and chases in its own Work, necessary for the installation of process equipment, and shall fill in around the same afterwards, if required.

**§22.14 CLEANING UP**

**§22.14.1** 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 and Subcontractor's tools, construction equipment, machinery, and surplus materials. In addition to general broom cleaning, Contractor shall perform, or insure performance of, the following final cleaning for all trades, at completion of the Work:

(a) Remove temporary protections;

(b) Remove marks, stains, fingerprints and other soil or dirt from painted, decorated, and natural-finished woodwork and other Work;

(c) Remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;

(d) Clean tubs, toilets and other mixtures, cabinet work and equipment, removing stains, paint, dirt, and dust, and leave same in undamaged new condition;

(e) Clean all metal finishes in accordance with recommendations of the manufacturer and accepted industry standards;

(f) Clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen; and

(g) Thoroughly clean all interior glass and mirror surfaces.

SAMPLE

**§22.14.2** 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 who shall pay such costs either by deductive Change Order or immediately upon demand, at the election of Owner.

**§22.15 ACCESS TO WORK**
**§22.15.1** Contractor shall provide Owner, Owner's lenders and invitees, and Engineer access to the Work in preparation and progress to wherever located.

**§22.16 ROYALTIES AND PATENTS.**
**§22.16.1** Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of patent rights and shall hold Owner harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Owner.

## ***ARTICLE 23***
## SUBCONTRACTORS

**§23.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.**
**§23.1.1** To the extent a Subcontractor is not selected pursuant to the provisions of Sections 1.2 and 1.3, Contractor shall comply with the following:

**§23.1.1.1** Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner 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 and provide a copy of the Subcontractor's bid or proposal. Owner will promptly reply to Contractor in writing to advise whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity.

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

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

**§23.1.1.4** Contractor shall not change a Subcontractor, person, or entity previously selected if Owner makes reasonable objection to such change. Owner may require Contractor to change any Subcontractor previously approved and Owner shall be responsible for any increase in the cost of the Work occasioned by such Owner required change if, and only if, Owner's objection to such Subcontractor is not reasonable.

**§23.2 SUB-CONTRACTUAL RELATIONS**
**§23.2.1** By appropriate written agreement, Contractor shall require each Subcontractor, to the extent of

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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 which Contractor, by these Documents, assumes toward Owner. Each Subcontract shall identify Owner as an intended third party beneficiary of the subcontract, shall preserve and protect the rights of Owner 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, the benefit of all rights, remedies and redress against Contractor, that Contractor, by the Contract Documents, has against Owner. 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, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§23.2.2** Without limiting the generality of Section 23.2.1, any part of the Work performed for Contractor by a Subcontractor, or its Sub-subcontractor shall be pursuant to a written Subcontract between Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of Subcontract satisfactory to Owner in all respects. Each such Subcontract shall, where the context so requires, contain provisions that:

(a) Waive all rights the contracting parties may have against one another or that the Subcontractor may have against Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents;

(b) Require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents, or to participate in an Owner Controlled Insurance Program if selected by Owner, and to file certificates of any such coverage with Contractor;

(c) Require the Subcontractor to submit certificates and waivers of claims to Contractor for work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;

(d) Require submission by Contractor or Subcontractor, as the case may be, of an Application for Payment in a form approved by Owner, together with clearly defined invoices and billings supporting all such applications under each Subcontract;

(e) Require each Subcontractor to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;

(f) Require that each Subcontractor accept an assignment of said Subcontract to Owner and continue to perform under its Subcontract in the event Contractor is terminated with no increase in price;

(g) Provide that such Subcontract (and any Sub-subcontracts entered into by such Subcontractor) shall be assignable to Owner or Owner's designee as set forth in the Contract; and

(h) Provide that Owner is an intended third-party beneficiary of the subcontract/sub-subcontract, and that any and all warranties contained in a Subcontract or Sub-subcontract shall run to the benefit of and be enforceable by Owner.

SAMPLE

**§23.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**
Each Subcontract for a portion of the Work is assigned by Contractor to Owner provided that: (a) the assignment is effective only after termination of the Contract by Owner and only for those Subcontracts that Owner accepts by notifying the Subcontractor in writing; and (b) the assignment is subject to the prior rights of Contractor's surety, if any.

## ***ARTICLE 24***
## ADMINISTRATION OF THE CONTRACT

**§24.1** Contractor will advise and consult with Owner using Contractor's best skill and attention. Contractor will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**§24.2** Contractor will be present on the Project Site daily during each stage of construction and will be intimately familiar with the progress and quality of the completed Work so as to determine if the Work is being performed in a manner such that the Work, when completed, will be in accordance with the Contract Documents. On the basis of its on-site observations and supervision, Contractor will keep Owner informed of progress of the Work and will guard Owner against defects and deficiencies in the Work.

**§24.3** Contractor will have control or charge of and be responsible for all construction means, methods, techniques, sequences, or procedures, and for safety precautions and programs in connection with the Work. Contractor will conduct safety meetings not less than monthly. Contractor will be responsible for its failure(s) to carry out the Work in accordance with the Contract Documents. Contractor will have control over or charge of and be responsible for acts or omissions of Contractor, Subcontractors, Sub-subcontractors or their agents or employees, or of any other persons performing portions of the Work.

**§24.4** Communications by Subcontractors or vendors with Engineer shall be through Contractor. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with separate contractors shall be through Owner. Owner may communicate directly with any Subcontractors or suppliers.

**§24.5** Reserved.

**§24.6** Engineer and Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever Engineer or Owner consider it necessary and advisable, Engineer or Owner will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed, or completed. However, neither this authority of Engineer or Owner nor a decision made by Engineer or Owner 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 performing portions of the Work. Contractor does not have any "You didn't catch me" defense.

**§24.7** Engineer will review and approve or take other appropriate action upon Contractor's submittals, such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Engineer's action will be taken to review submittals and provide a response within Twenty-One (21) calendar days. Owner will notify Engineer to review submittals identified by Contractor as critical with such promptness and expediency and

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provide a response in less time, as to minimize or 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 conducted, among other things, 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. Engineer's review of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents.

**§24.8** Engineer and Owner will review Change Orders and Construction Change Directives.

**§24.9** Engineer will conduct inspections to determine the date or dates of Substantial Completion (defined below) and the date of final completion, will receive and forward to Owner for Owner's review and records written warranties and related documents required by the Contract and furnished through Contractor, and will issue a final "Certificate for Payment" upon compliance with the requirements of the Contract Documents.

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

**§24.11** Interpretations and decisions of Engineer will be consistent with the intent of the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, Engineer will secure faithful performance by both Owner and Contractor and will not show partiality to either.

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## ***ARTICLE 25***
## CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

**§25.1.1** 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 Project Site under conditions of the Contract. If Contractor claims that delay or Additional Cost is involved because of such action by Owner, Contractor shall make such Claim in accordance with the Contract Documents. Contractor shall notify Owner if any such independent action will in any way compromise Contractor's ability to meet Contractor's responsibilities under this Contract. Contractor shall fully cooperate with Owner's separate contractors, and such separate contractors and Owner shall also fully cooperate with Contractor.

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

**§25.1.3** 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 cooperate and participate with other separate contractors and Owner.

**§25.1.4** In case of disagreement or disputes regarding the scheduling of Work by other contractors or unnecessary interference to the Work caused by lack of cooperation between other contractors and Contractor, Contractor shall fully cooperate to resolve any disputes with or between other contractors. In

case of disagreements or disputes between two or more contractors, Owner shall be consulted and its decisions as to proper methods for coordinating the Work shall be final, binding and not reviewable. Contractor shall provide access to the Work so as to fully cooperate with Owner and other contractors in the performance of their Work.

**§25.2 MUTUAL RESPONSIBILITY**

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

**§25.2.2** If part of Contractor's Work depends on proper execution or results from 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 to so report shall constitute an acceptance of Owner's or separate contractors completed or partially completed construction as fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

**§25.2.3** Contractor shall promptly remedy damage wrongfully caused by Contractor to completed, or partially completed construction or to property of Owner or separate contractors.

**§25.2.4** Should Contractor delay or cause damage to the Work or property of any separate contractor, Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues Owner on account of any delay or damage alleged to have been caused by Contractor, Owner shall notify Contractor who shall indemnify and defend such proceedings at Contractor's sole expense.

**§25.3 OWNER'S RIGHT TO CLEAN UP**

**§25.3.1** 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 as described in Article 1, Owner may clean up and allocate the cost among those responsible as Owner determines to be just.

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## ***ARTICLE 26***
## PAYMENTS

**§26.1 SCHEDULE OF VALUES**

**§26.1.1** Before each Application for Payment, Contractor shall submit to Owner any adjustment to the Schedule of Values as provided in Part II allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as Owner may require. The GMP Schedule, attached hereto as **Exhibit C** with any adjustment approved by Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.

**§26.2 APPLICATIONS FOR PAYMENT**

**§26.2.1** On or before the last day of each calendar month, Contractor shall submit to Owner an itemized Application for Payment for operations completed in accordance with the Schedule of Values; although dated as of the last day of a calendar month, the Application for Payment shall be prepared from actual results as of the twenty- fifth (25th) day of the month and projected results through the end of that month. Each Application for Payment shall be prepared in both "hard copy" and via electronic media and shall be in a form acceptable to Owner. Such application shall be sworn to or affirmed under oath and supported by such data substantiating Contractor's right to payment as Owner may require, e.g., copies of requisitions

from Subcontractors and material suppliers. Such application shall include Contractor's unconditional lien release for all Work performed through the preceding payment, and a lien release for all Work performed through the current month conditioned on receipt of payment.

(a) Such application may include requests for payment for changes in the Work that have been properly authorized by Construction Change Directive and/or included in Change Orders.

(b) Such applications may not include requests for payment of amounts that Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason. Contractor shall reject or modify the requisition of a Subcontractor for any of the following reasons, unless Contractor and Owner agree that notwithstanding the existence of a reason for such action by Contractor, it is nonetheless advisable to process the requisition:

(1) Work not performed in accordance with the Contract Documents and not remedied;

(2) Claims filed against the Project, Project Site or Subcontractor;

(3) Failure of Subcontractor to make payments to its agents, employees, or Sub-subcontractors for labor, material, or equipment;

(4) Damage to person or property caused by Subcontractor's activities;

(5) Delays in the prosecution of any portion of the Work caused by Subcontractor;

(6) Failure of Subcontractor to submit the required release and waiver;

(7) Back charges; or

(8) Any other cause as directed by Owner.

**§26.2.2** Owner shall retain five percent (5%) of any portion of the value of each Application for Payment as approved by Owner, unless Owner consents in writing to a different percentage per Section 6.5.

**§26.2.3** Payments may be made on account of materials and/or equipment delivered and suitably stored at the Project 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 Project Site at a location agreed upon in writing. Payment for materials and/or equipment stored on or off the Project Site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner to establish Owner's title to such materials and equipment and to protect Owner's interest, which shall include applicable insurance, storage, and transportation to the Project Site for such materials and equipment stored off the Project Site. Contractor shall submit, within thirty (30) calendar days after the date of commencement of the Work, and thereafter as Owner requires, schedules of materials and equipment for each category or Subcontract for which Application for Payment under this Section is made, which schedule shall include items, quantities, value or unit prices with extensions and the month in which Application for Payment with respect thereto is expected to occur. Schedules will be updated on a monthly basis and submitted as an attachment to Contractor's Applications for Payment. Owner must approve a payment schedule for each item to be invoiced prior to submittal of the invoice. Requests for such payments shall be delivered to Owner for approval by the fifth (5th) day of each month for inclusion into the following month's payment estimate and shall include the following:

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(a) A verification of a conveyance of title for the material or apparatus without encumbrances.

(b) A copy of the supplier invoices verifying material costs.

(c) A "Certificate of Compliance" from the supplier verifying that the material or apparatus quality and quantity is in accordance with the technical requirements.

(d) Location of the material with designed clear access when location is other than Owner's property. If the property is privately owned Contractor shall list Owner as a second party to the storage lease or other negotiated agreement between Contractor and property owner(s).

(e) Insurance coverage acceptable to Owner.

Prior payments for materials and equipment shall be subtracted proportionately from the payment for completed Work as the material or equipment is incorporated into the Work in whole or in part.

**§26.2.4** Contractor warrants that title to all Work (including all materials, whether or not then incorporated or installed into the Project, subject to the right of Owner to reject same for failure to conform to the standards of any or all of the Contract Documents) covered by an Application for Payment will pass to Owner no later than the time of payment, free of liens and security interests. Contractor further warrants that upon submittal of an Application for Payment (a) all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information and belief, are free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work, and (b) all Work performed to date is free of any error, omission, negligent or willful act of Contractor or its agents, employees or Consultants, in connection with the Project.

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**§26.3 CERTIFICATES FOR PAYMENT**

**§26.3.1** Owner will, within seven (7) calendar days after receipt of Contractor's Application for Payment, will either process the proposed Certificate for Payment, or notify Contractor in writing of Owner's reasons for withholding payment in whole or in part as provided in Section 26.4.1.

**§26.3.2** An acceptance of Contractor's Application for Payment will not be a representation that Owner has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (b) reviewed construction means, methods, techniques, sequences or procedures, (c) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment, or (d) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum. Payment does not indicate acceptance of faulty or defective work.

**§26.4 DECISION TO WITHHOLD APPROVAL OF PAYMENT APPLICATION**

**§26.4.1** Owner may decide not to approve payment and may withhold a proposed Payment in whole or in part, to the extent reasonably necessary to protect Owner as provided below. If Contractor and Owner cannot agree on a revised amount, Owner will promptly issue a proposed approved Application for Payment for the amount for which Owner is able to approve. Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in Owner's opinion to protect Owner from loss because of:

(a) Defective Work not remedied;

(b) Third party claims filed or reasonable evidence indicating probable filing of such claims;

(c) Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

(d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(e) Damage to Owner or another contractor;

(f) 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

(g) Persistent failure to carry out the Work in accordance with the Contract Documents or any error, omission, negligent or willful act of Contractor or its agents, employees or consultants, in connection with the Project.

(h) Evidence from periodic audits of Contractor's financial records that the Project has been overbilled.

**§26.4.2** When the above reasons for withholding approval for payment are removed, the approval will be made for amounts previously withheld. If Contractor disputes any determination by Owner with regard to a proposed approval for an Application for Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work. Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided, that Owner has specified to Contractor Owner's reason for such withholding. In any of the events described in Section 26.4.1, Owner shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims, to complete the Work or to compensate Owner for any loss suffered by reason of Contractor.

**§26.5 PAYMENTS BY OWNER AND CONTRACTOR**

**§26.5.1** On or before twenty-five (25) calendar days after Owner's receipt of Contractor's Certificate for Payment, Owner shall make payment to Contractor of the amount specified therein unless Owner objects to any portion thereof as provided above, in which case Owner shall make payment of the balance and give notice to Contractor of the amounts withheld and the reasons for such withholding. Such payment by Owner shall not constitute approval or acceptance of any work in the Application for Payment. No partial payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieve Contractor of any of its obligations with respect thereto. Owner shall not be required to make any payment until Owner has received a release of liens and claims for payment from Contractor, and from all Subcontractors/Vendors for the portion of the Work covered by such payments.

**§26.5.2** Contractor shall make payment to all Subcontractors/Vendors within seven (7) calendar days of receipt of requisitioned funds and shall provide Owner evidence of such payments upon request. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner. If required by Owner, Contractor shall send to Owner copies of receipts from the Subcontractors for the payment made to them by Contractor. Contractor shall in no event, however, stop the Work during the pendency of a bona fide dispute between Owner and Contractor or any

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Subcontractor.

**§26.5.3** 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.

**§26.6 FAILURE OF PAYMENT**

**§26.6.1** If Owner does not pay Contractor within thirty (30) calendar days after Owner's receipt of an approved Application for Payment to which Owner does not make written objection as provided in Section 26.5.1, then Contractor may, upon seven (7) additional calendar days' written notice to Owner, stop the Work until payments of the amount owing has been received.

## ***ARTICLE 27***
## CHANGES IN THE WORK

**§27.1 GENERAL**

**§26.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by timely accepted Request for Project Change (RPC), Change Order, "Construction Change Directive" or order for a minor change in the Work, subject to the limitations stated in this Article 27 and elsewhere in the Contract Documents. Owner reserves the right to make any changes, deletions, or additions, in whole or in part in the plans, Specifications, and manner of performance of the Work, including acceleration of the Work that it may deem desirable. Contractor agrees to immediately, when directed in writing by Owner, perform the Work diligently and without delay.

**§27.1.2** A Change Order shall be based upon agreement between Owner and Contractor, a Construction Change Directive or any order for a minor change in the Work may be issued by Owner alone; an order for a minor change in the Work may also be issued by Engineer alone provided (a) Engineer provides prior written notice thereof to Owner and (b) the order does not involve an adjustment to the Contract Sum or an extension to the Contract Time. All are required to be in writing and signed. The Contract may be amended or modified only by a Change Order.

**§27.1.3** 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.

**§27.1.4** Upon the receipt of a design change by revised drawing or bulletin, Contractor shall review the change and within Ten (10) calendar days submit a Request for Project Change (RPC) to Owner, which RPC shall give an estimate of the cost impact of the design change(s). The cost estimate is not binding but should be Contractor's best reasonable estimate at the time. Once Owner has accepted an RPC, Contractor is permitted to perform the work with the final reasonable cost thereof to be determined by Owner and Contractor. If Owner does not approve an RPC within 24 hours of submission it shall be deemed to be denied or disapproved. If an RPC is denied or disapproved, any Work performed by Contractor pursuant to the RPC shall be at Contractor's own cost. In no event shall work done pursuant to an accepted RPC result in anything more than a reasonable cost. Contractor shall seek to have an RPC converted to a Change order as quickly as reasonably and prudently possible.

**§27.1.5** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to Owner or

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Contractor, the applicable unit prices shall be equitably adjusted.

**§27.2 CHANGE ORDERS**

**§27.2.1** Engineer shall not be a necessary party to a Change Order unless the change involves a material change to the Design Documents.

**§27.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Section 27.4.5.

**§27.3 CHANGE ORDER PRICING**

**§27.3.1** Contractor shall furnish to Owner, in connection with any proposed Change Order, back up cost documentation in the level of detail specified by Owner. The amount of overhead and fee to be included in a Change Order shall be negotiated on a Change Order by Change Order basis and mutually agreed upon by Owner and Contractor. No overhead and profit paid to any Subcontractor for work performed pursuant to a Change Order shall exceed ten percent (10%) of the direct cost for overhead and five percent (5%) of the direct cost for profit, and Contractor's Fee shall not be increased (if it is increased at all) by more than five percent (5%) of the net increase to the GMP, taking into account both additive and deductive Change Orders.

For work performed by a Subcontractor under a Change Order or a Construction Change Directive, the Subcontractor's mark-ups for overhead and profit shall not exceed fifteen percent (15%) of the Cost of the Work performed by the Subcontractor and ten percent (10%) for work performed by a lower-tier Subcontractor. These mark-ups will include all non-working supervision, project management, home office overhead, cleanup, all indirect costs, all field office overhead (unless the Contract Time is extended), and field personnel not actually performing the additional work.

**§27.4 CONSTRUCTION CHANGE DIRECTIVES**

**§27.4.1** Construction Change Directives may be used in the absence of total agreement on the terms of a Change Order.

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

(a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating date to permit evaluations;

(b) Unit prices stated in the Contract Documents or subsequently agreed upon;

(c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. Any such proposals from Subcontractors shall not include any amounts for overhead and profit in excess of an aggregate of Fifteen percent (15%) of the cost of such Subcontractor's Work; or

(d) As provided in Section 27.4.5.

**§27.4.3** Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner 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.

**§27.4.4** A Construction Change Directive signed by Contractor indicates the agreement of Contractor

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therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall then become a formal Change Order in order to modify the Contract.

**§27.4.5** If Contractor does not respond within seven (7) calendar days 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, an allowance for overhead and profit as set forth below. In such case, and also under Section 27.4.2, 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 purpose of this Section 27.4.5 shall be limited to the following items, further limited by the GMP:

(a) Labor.

(1) Actual Wages – labor hours, rate and extension by craft and class, but excluding premium pay unless addressed in the Change Directive, paid to all employees directly engaged in the work below general foreman level.

(2) Labor Burden – for each craft and class to be reimbursed at actual cost.

(b) Subsistence and/or Mileage – if required in union agreements.

(c) Materials – all materials incorporated in the Work at Contractor's net cost.

(d) Overhead – only those direct jobsite costs (not including any general overhead or profit) directly attributable to the change are to be included in the cost of the change, subject to Owner's prior approval.

(e) Premium Time – actual premium cost paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance, and union fringe benefits if required by union agreements.

(f) Freight – actual freight of materials used based on actual invoices.

(g) Equipment Rental – total compensation for equipment shall be as follows:

(1) Contractor's net invoice cost. However, the maximum amount Owner will be obligated to pay will not exceed that amount detailed under this Article.

(2) Transportation cost for equipment will be paid only if it is allocable to a specific change.

(h) Subcontractor Cost – shall be reimbursed in the same manner prescribed for Contractor.

(i) Directed Overtime – When Owner authorizes and directs Contractor to work overtime on Contract Work, for reasons that are not Contractor's responsibility, Owner shall pay the premium labor costs. No overhead and profit shall be applied to the labor premium.

(j) Other Direct Costs – verifiable Contractor costs for labor, equipment, and materials incorporated into the Work, along with Subcontractor direct costs. Direct costs specifically excluding, without limitation, non-verifiable costs such as job site overhead, Contractor consumables, small tools (less

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than Five Hundred Dollars ($500.00) in value), support vehicles, equipment and labor which cannot be attributed directly to one piece of equipment or to one item of the Work.

**§27.4.6** Pending final determination of cost to Owner, amounts not in dispute may be included in Applications for Payment. 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.

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

**§27.5 MINOR CHANGES IN THE WORK**

**§27.5.1** Engineer 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 consistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly.

## ***ARTICLE 28***
## COMPLETION AND FINAL PAYMENT

**§28.1 GENERAL**

**§28.1.1** Time limits stated in the Contract Documents are of the essence of the Contract. Contractor is firmly obligated to meet the stipulated completion date or dates for its Work, as adjusted in accordance with the terms of this Contract. By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§28.1.2** Contractor shall not knowingly, except by written agreement or instruction by Owner, prematurely commence operations on the Project Site or elsewhere prior to the effective date of insurance required under this contract to be furnished by Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The start time for the Contract shall be established by a Notice to Proceed issued by Owner.

**§28.1.3** Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Contractor shall utilize such additional labor, premium time, equipment, and materials, as necessary, in order to meet any interim milestone dates, set forth in the Contract and the date of Substantial Completion.

**§28.1.4** Reserved.

**§28.2 SUBSTANTIAL COMPLETION**

**§28.2.1** 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 Owner can occupy or utilize the Work for its intended use. In addition to the foregoing, the Work or any designated portion thereof shall not be considered to have reached the stage of Substantial Completion unless all of the following conditions have been satisfied: (a) such Work has been fully completed with the exception of minor "punch-list" items which do not interfere with Owner's use and enjoyment of the completed Work as an operating first-class establishment; (b) temporary certificates of use and occupancy have been obtained from all necessary governmental authorities; (c) all HVAC systems are fully functioning and have been accepted by Owner; (d) all life safety systems are fully functioning and have been accepted by Owner and approved by applicable governmental authorities; and (e) a certificate of Substantial Completion had

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been issued by Engineer.

**§28.2.2** When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately (if any), is substantially completed Contractor shall prepare and submit to Engineer a comprehensive list of items to be completed or corrected. Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of Contractor's list, Engineer will make an inspection to determine whether the Work or designed portion thereof is substantially complete. If Engineer's or Owner's inspection discloses any item, whether or not included on Contractor's list, which is not in accordance with the requirements of the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Engineer or Owner. Contractor shall then submit a request for another inspection by Engineer to determine Substantial Completion. 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, and except as to latent defects and matters specified in any punch-list delivered with respect to the Project or a portion thereof. The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance.

**§28.3 PARTIAL OCCUPANCY OR USE**

**§28.3.1** Owner may occupy or use any completed or partially completed portion of the Work at any stage if in Owner's judgment it is advisable to do so. Such partial occupancy or use may commence whether or not the portion is substantially complete. When Contractor considers a portion substantially complete, Contractor shall prepare and submit a list to Engineer as provided under Section 28.2.2.

**§28.3.2** 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.

**§28.3.3** Unless otherwise agreed upon in writing, 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.

**§28.4 FINAL COMPLETION AND FINAL PAYMENT.**

**§28.4.1** Following Engineer's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and Contractor's completion of the Work, Contractor shall forward to Owner a written notice that the Work is ready for final inspection and acceptance and shall also forward to Owner a final Project Application for Payment. Final completion of Work shall not be deemed to have occurred until Owner, in its judgment, shall have received satisfactory evidence that:

(a) All Work, including all punch-list items, have been fully and satisfactorily completed in a good and workmanlike manner, in strict conformance with the Contract Documents and in full compliance with all applicable legal requirements; and

(b) Contractor has performed all of its Work as required to obtain all final certificates of approval relating to the Work and the contemplated uses of the Project, including, without limitation, all necessary permanent certificates of occupancy, public assembly permits, other operational permits and

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certificates of any applicable Board of Fire Underwriters or any successor thereto, and all such permits and certificates shall have been issued and delivered to Owner.

(c) Contractor has submitted a final accounting and Owner's accountants substantiate the accuracy of Contractor's final accounting as provided in Section 6.6.

**§28.4.2** Neither final payment nor any remaining retained percentage shall become due until Contractor submits to Owner (a) 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, (b) 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, (c) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d) consent of surety, if any, to final payment, (e) 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 and (f) a final release of claims from Contractor conditioned upon final payment, and (g)such other documents as Owner may require, including assignments of warranties and guarantees, instruction manuals, "as-built" Drawings and certifications. If a Subcontractor refuses to furnish a release or waiver required by Owner, 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.

**§28.4.3** Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of all 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. All obligations of Contractor, including without limitation, those establishing warranty obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment, and shall survive the contract. Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any partial or final payment by Owner, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by Owner, nor any act of acceptance by Owner, nor any failure to do so, nor any correction of defective Work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents. Unless the parties agree otherwise, the following notarized statement shall be on the final request for payment submitted by Contractor after completion of the Work:

> "In consideration for Owner paying the above invoice together with the other invoices on this Contract previously submitted by Contractor to Owner, the aggregate amount totaling one hundred percent (100%), the undersigned agrees to release and discharge Owner of and from all claims and demands for extra labor or material furnished for or in connection with the Work, which is the subject matter of said Contract; and also agrees to hold harmless and indemnify said Owner from and against any and all delay claims, claims of mechanics or material suppliers and from and against any and all delay for material furnished and provided and Work and labor done and performed upon the Work which is the subject matter of said Contract."

## ***ARTICLE 29***
## UNCOVERING AND CORRECTION OF WORK

### §29.1 UNCOVERING OF WORK

**§29.1.1** If a portion of the Work is covered contrary to Owner's or Engineer's request or any applicable

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governmental or tribal authority's requirements, or to requirements specifically expressed in the Contract Documents, it must, if required in writing, be uncovered for their observation, and be replaced at Contractor's expenses without change in the Contract Time.

**§29.1.2** If a portion of the Work has been covered, which Engineer or Owner has not specifically requested to observe prior to its being covered, Engineer or Owner 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 charged to Owner. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.

**§29.2 CORRECTION OF WORK**

**§29.2.1** Contractor shall promptly correct Work rejected (a) by any applicable governmental authority, or (b) by Engineer or Owner as defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for Engineer's services and expenses made necessary thereby.

**§29.2.2** If any of the Work is found to be defective or 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. This obligation under this Section 29.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. Owner shall give notice of defect promptly after discovery of the condition.

**§29.2.3** Contractor shall remove from the Project Site portions of the Work that are defective or not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.

**§29.2.4** If Contractor fails to promptly correct defective or non-conforming Work within a reasonable time fixed by written notice from Engineer or Owner, Owner may correct it in accordance with Section 21.3. If Contractor does not proceed with correction of such defective or non-conforming Work within the reasonable time fixed by written notice from Engineer or Owner, Owner may remove it and store the savable material or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten (10) calendar days after written notice, Owner may upon ten (10) additional calendar days written notice dispose of such materials and equipment.

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

**§29.2.6** Nothing contained in this Section 29.2.6 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 time period of one year as described in Section 29.2.2 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.

SAMPLE

**§29.3 ACCEPTANCE OF NON-CONFORMING WORK**

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

## ***ARTICLE 30***
## CLAIMS AND DISPUTES

**§30.1 RESOLUTION OF CLAIM DISPUTES**

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

**§30.1.2** Claims by Contractor must be made within ten (10) calendar days after occurrence of the event giving rise to such Claim. An additional Claim made after the initial Claim has been affected by Change Order will not be considered unless (a) based upon different facts from those giving rise to the initial Claim, and (b) submitted in a timely manner.

**§30.1.3** Pending final resolution of a Claim, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

**§30.1.4** If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 31.3.

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

**§30.1.6** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) calendar days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## ***ARTICLE 31***
## PROTECTION OF PERSONS AND PROPERTY

**§31.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§31.1.1** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. All Work shall be performed in strict compliance with the requirements of the applicable federal, state, and Tribal safety and health laws and programs. Owner will not be responsible in any way for providing a safe place for the performance of the Work by Contractor, any Subcontractor or Sub-subcontractor, or any of their respective agents or employees.

SAMPLE

**§31.1.2** If Contractor is responsible for the abatement or removal of asbestos in the Project as set forth in the Contract Documents, Contractor and Subcontractors shall undertake any such activities in accordance with the terms of this Contract and any applicable federal law for hazardous waste removal.

**§31.1.3** Contractor shall conduct safety meetings with its site personnel and Subcontractors not less often than monthly.

**§31.2 SAFETY OF PERSONS AND PROPERTY**

**§31.2.1** Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

(a) Employees on the Work and other persons who may be affected thereby;

(b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of Contractor or Contractor's Subcontractors or Sub-subcontractors; and

(c) The Building and any portions thereof and any other property at the Project Site or adjacent thereto and any other property on which Work will be performed or which Contractor will occupy or cross in performing the Work, including any trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction and the Work of Owner or any of Owner's separate contractors.

**§31.2.2** 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.

**§31.2.3** 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 Owner and users of adjacent sites and utilities.

**§31.2.4** 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.

**§31.2.5** 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 31.2.1(b) and 31.2.1(c) caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 31.2.1(b) and 31.2.1(c), 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. Contractor shall designate a responsible member of Contractor's organization at the Project Site to be safety director, whose duty shall be the prevention of accidents.

**§31.2.6** Contractor shall not load or permit any part of the construction or Project Site to be loaded so as to endanger its safety.

SAMPLE

**§31.3 EMERGENCIES**

**§31.3.1** In an emergency affecting safety of persons or property, Contractor shall act reasonably to prevent threatened damage, injury, or loss.

## ***ARTICLE 32***
## MISCELLANEOUS PROVISIONS

**§32.1 RIGHTS AND REMEDIES**

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

**§32.1.2** No action or failure to act by Owner or Engineer 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 provided by the Contract Documents or specifically agreed in writing.

**§32.2 TESTS AND INSPECTIONS**

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

**§32.2.2** If Engineer, Owner or applicable public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 32.2.1 Owner or Engineer, upon written authorization from Owner, will instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Contractor shall give timely notice to Engineer of when and where tests and inspections are to be made so Engineer may observe such procedures. Owner shall bear such costs except as provided in Section 13.2.3.

**§32.2.3** If such procedures for testing, inspection, or approval under Sections 32.2.1 and 32.2.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall (a) correct any items of non-compliance within seventy-two (72) hours of Contractor's receipt of a notice to that effect and (b) bear all costs made necessary by such failure including those of repeated procedures and compensation for Engineer's services and expenses.

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

**§32.2.5** If Engineer or Owner wishes to observe tests, inspections or approval required by the Contract Documents, they will do so promptly and, where practicable, at the normal place of testing.

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

SAMPLE

**§32.3 COMMENCEMENT OF STATUTORY LIMITATION PERIOD.**
**§32.3.1** As between Owner and Contractor:

**§32.3.1.1** Before Substantial Completion: As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued in any and all events on such date of Substantial Completion.

**§32.3.1.2** Between Substantial Completion and final Certificate for Payment: As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued in any and all events on the date of issuance of the final Certificate for Payment; and

**§32.3.1.3** After Final Certificate for Payment: As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events on the date of any act or failure to correct the Work by Contractor under Section 29.2, 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.

**§32.4 FURTHER ASSURANCES**
**§32.4.1** If this Contract is terminated pursuant to any of the foregoing provision of this Article 9, then Contractor shall (a) execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as Owner may require for the purpose of fully vesting in Owner the rights and benefits of Contractor under such obligations and commitments, and (b) account for and turn over to Owner all Drawings and Specifications, correspondence, details, Shop Drawings, Samples and Product Data and such other Contract Documents, records and materials relating to the Project. (Contractor may make a copy for itself, which shall be confidential.) Compliance by Contractor with the foregoing shall be a condition precedent to Contractor's right to receive payment for termination in accordance with Article 9.

**§32.5 RESERVATION OF RIGHTS**
**§32.5.1** Neither the right of Owner to terminate as provided in this Article 9 nor the agreement on the part of Owner to pay any cost of the Work (for which Owner would not otherwise be obligated) incurred by reason of events within the control of Contractor (including the negligent and/or willful act and/or omission of and/or default by any separate contractor employed directly by Contractor) or incurred by reason of a default by Contractor in the performance of its obligations hereunder shall impair or limit any rights, remedies and/or Claims of Owner to which Owner may be entitled by reason of any such occurrence or default. An agreement on the part of Owner to increase the Project Cost shall not be a waiver of the foregoing reservation.

**§32.6 EXTENT OF CONTRACT**
**§32.6.1** This Contract represents the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Contractor.

**§32.7 EXECUTION IN COUNTERPART**
**§32.7.1** 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.

SAMPLE

**§32.8 SEVERABILITY**

**§32.8.1** 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.

**§32.9 INTERPRETATION**

**§32.9.1** 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.

**§32.9.2** 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.

**§32.9.3** Unless the context otherwise requires, the definitions set forth above shall apply equally to the singular and plural, as well as the active form of any particular term.

**§32.9.4** 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.

**§32.10 ACTS OF GOD AND FORCE MAJEURE**

**§32.10.1** 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.

**§32.10.2** 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.

SAMPLE