

**CITY OF BOISE
PUBLIC WORKS DEPARTMENT
FORMAL BID
CONSTRUCTION**



FB 16-121

**CITY HALL REMODEL OF
BOISE CITY UTILITY BILLING**

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INVITATION FOR BID

January 12, 2016

The City of Boise, Idaho, invites you to submit a sealed bid for City Hall Remodel of Boise City Utility Billing. Bids will be received at the Department of Finance and Administration, Purchasing Office located at 150 N. Capitol Blvd., Boise, Idaho, 83702 until **February 3, 2016 at 10:30 am** local time.

Bids will be prepared per the specifications detailed within the Bid document. Bid packets are available at no charge with registration through DemandStar (link provided on City Website). www.cityofboise.org or a CD copy can be picked up at the Purchasing Office of the City of Boise, 150 North Capitol Blvd., Boise, Idaho.

The project consists of the following work: General tenant improvement including demolition, framing and drywall, aluminum storefront and glazing, painting, carpet, electrical and HVAC modifications and associated work.

Substantial completion must be within 90 days from the start of the work. Final completion of the entire work must be within 105 days.

A Pre-bid Meeting will be held on January 26, 2016, at 10:00 a.m. local time at City Hall, 150 N Capitol Blvd, Boise Idaho in the Belgravia conference room located on the second floor of building 2. Questions related to bidding procedures, bidding documents, etc. should be directed to the Purchasing Office at 208-384-3775.

Plans, specifications, bid forms and other information are on file for examination at the following locations:

Purchasing Office
City of Boise
Boise City Hall
150 N. Capitol Blvd.
Boise, Idaho 83702

Associated General Contractors
1649 W. Shoreline, Suite 100
Boise, Idaho 83702

The City of Boise reserves the right to reject any and all bids, to waive any irregularities in the bids received and to accept the bid(s) that are in the best interest of the City. Boise City is an Equal Opportunity Employer. The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates.

The City appreciates your interest in meeting the needs of the citizens of Boise.

City of Boise, Idaho

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BID SUBMITTAL INSTRUCTIONS AND INFORMATION

- Bids are to be received by the Purchasing Office, located at Boise City Hall, 150 N. Capitol Blvd., Boise, Idaho, 83702, no later than 10:30 a.m., local time, on February 3, 2016.
- It is the sole responsibility of the submitting Bidder to timely submit his/her bid in a properly marked envelope by the scheduled opening date.
- Submittal packages must include one (1) copy of your bid.
- The submission package or envelope must be **SEALED** and **plainly marked** with the following: (1) the Solicitation number, (2) the name of the service being sought, and (3) the opening date and time. The Bidder's return address must appear on the envelope or package. *Do not* respond to more than one Solicitation in the same envelope. A submission made using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above. No responsibility will attach to the City, or to any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a submission not properly addressed and identified.
- **DO NOT FAX YOUR BID.** Bids must be submitted in writing. No oral, telephone, facsimile, telegraphic, or late submissions will be considered. All submissions must be received at the City Purchasing Office and time and date stamped prior to the closing date and time. It is the submitting Bidder's responsibility to timely submit their Bid in a properly marked envelope, prior to the scheduled closing, for receipt in sufficient time to allow the submission to be time and date stamped.
- **ALL BIDS MUST BE SIGNED.** Bids not signed will be disqualified and considered non-responsive.
- The Contract Agreement and any attachments to this document will form the terms and conditions of the agreement and will be binding on the successful Bidder. The successful Bidder will be expected to execute the Contract Agreement and fully execute the services described within this document and their Bid.
- **THE OWNER IS THE CITY OF BOISE**

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GENERAL CONDITIONS

These General Conditions are presented for clarification of the Terms and Conditions included with the Contract Agreement and are not intended to replace or take precedence over those Terms and Conditions.

1.1 Intent of Bid

It is the intent of this request for Bids to define requirements in sufficient detail to secure comparable Bids. Bids shall be in accordance with Bid document requirements. Bids not conforming to the requested format or not in compliance with the specifications will be considered non-responsive.

1.2 Bid Costs

The Bidder will be responsible for all costs (including site visits where needed) incurred in preparing or responding to this bid. All materials and documents submitted in response to this bid become the property of the City and will not be returned.

1.3 Reserved Rights

The City of Boise reserves the right to accept or reject Bids.

1.4 Public Records

The Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a State or local agency regardless of the physical form or character. All, or most, of the information contained in your Bid will be a public record subject to disclosure under the Public Records Act and will be available for inspection and copying by any person. The Public Records Act contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.

If you consider any element of your Bid to be a trade secret, or otherwise protected from disclosure, you **must**:

- a. Indicate by marking **each page** of the pertinent document confidential; and,
- b. Include the specific basis for your position that it be treated as exempt from disclosure.

Prices quoted in your Bid are not a trade secret.

The following is not acceptable or in accordance with the Public Records Act and **will not be honored**:

- a. Marking your entire Bid as exempt; or,
- b. Placing a statement or legend on one (1) page stating that all or substantially all of the response is exempt.

The City, to the extent allowed by law and in accordance with these Instructions, will honor a designation of nondisclosure. If you claim material to be exempt from disclosure under the Idaho Public Records Act, the Proposer will expressly agree to defend, indemnify and hold harmless the City from any claim or suit arising from the City's refusal to disclose any such material. Any questions regarding the applicability of the Public Records Act should be addressed to your own legal counsel – **Prior to submission.**

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1.5 Taxes

The City of Boise is exempt from Federal and State taxes and will execute the required exemption certificates for items purchased and used by the City. Items purchased by the City and used by a contractor are subject to Use Tax. All other taxes are the responsibility of the Contractor and are to be included in the Contractor's Bid pricing.

1.6 Request for Clarification, Protest of Bid Requirements, Standards, Specs, or Process

Any Bidder who wishes to request clarifications, or protest the requirements, standards, specifications or processes outlined in this Request for Bid may submit a written notification to the Purchasing Office to be received no later than 12:00 p.m., January 27, 2016.

The notification will state the exact nature of the clarification, protest, describing the location of the protested portion or clause in the Bid document and explaining why the provision should be struck, added, or altered, and contain suggested corrections. The Purchasing Office may deny the protest, modify the Bid, and/or reject all or part of the protest. Changes to these specifications will be made by written addendum. Verbal responses will not be binding on the City or the Bidder.

Written requests are to be directed to:

Kathy Chase – City of Boise Purchasing
150 N. Capitol Blvd
Boise ID 83702
kchase@cityofboise.org

1.7 Addenda

If this bid is modified by the Purchasing Office, the modifications will be sent to each plan-holder in writing through DemandStar, by either fax or e-mail. Verbal modifications are not binding on the City or the Bidder. No oral changes will be considered or acknowledged. Bidders are requested to acknowledge each addendum received in their Bid Response.

1.8 Modification and Withdrawal of Bid

A Bid may be modified or withdrawn by the Bidder prior to the set date and time for the opening of Bids. Bids may not be modified or withdrawn after the bid opening.

1.9 Bid and Price Guarantee

It is desired that the submitted Bid remain in effect for a minimum of 60 days, along with all Bid pricing. If this is not accepted, Bidder is to so indicate.

1.10 Disadvantaged Business Enterprises (DBE)

D.B.E. firms and business enterprises are encouraged to submit a Bid. Women owned and minority owned firms are encouraged to submit a Bid. The City actively encourages any Bids by D.B.E. firms for goods and services for the City.

1.11 Evaluation of Bidder

Award will be whichever is determined to be in the best interest of the City. The award may be on the lowest cost to the City.

1.12 Award Criteria

Criteria will include pricing for options that best suit the needs of Boise and compliance with the specifications.

1.13 Lowest Responsive Bidder

All contracts or award of Bids shall be awarded to the lowest responsive Bidder, with all costs to the City considered.

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1.14 Payments and Billings

The Awarded Bidder will submit all invoices to:

City of Boise – Public Works Department
P.O. Box 500
Boise, ID 83701
Attn: Scott Canning

1.15 Guarantee

The contractor performing any part of the work and any subcontractors under the contract shall guarantee their respective work, and all workmanship performed, materials and equipment furnished, used or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the drawings, specifications, and other contract documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the contract shall be fulfilled. This guarantee shall be for a period of one (1) year from and after the date of completion and acceptance of the work as stated in the final estimate. The Contractor shall repair, correct or replace as required, promptly and without charge, all work, equipment and materials, or parts thereof, which fail to meet the above guarantee or which in any way fail to comply with or fail to be in strict accordance with the terms and provisions and requirements of the contract during such one year period, and also shall repair, correct or replace all damage to the work resulting from such failure.

1.17 Protest of Contractor Selection or Contract Award

A participating bidder may object to the contract award, by responding in writing to the City's notice of intent to award the contract within seven (7) calendar days after the date of transmittal of the notice. The responsive protest must set forth the express reason(s) that the award decision is in error. The judgment used in the scoring by individual evaluators is not grounds for a protest.

- Only persons who submitted a bid/proposal are allowed to protest the award.
- Protest must be in writing and received within seven (7) days of Intent to Award Letter posting.
- Purchasing will address the protest with input from Project Manager if necessary.
- After receipt of protest response bidder has three (3) working days (Monday – Friday) to protest to the City Council by submitting a protest of the decision to the City Clerk. City Clerk will then schedule the bidder to present their case for City Council.

Written protests are to be directed to:

Colin Millar, Purchasing Agent
 150 N. Capitol Blvd
 Boise, ID 83702
 Fax 208.384.3995
cmillar@cityofboise.org

The City of Boise reserves the right to reject any and all Bids, to waive any irregularities in the Bids received, to award on total bid, and to accept the Bid deemed most advantageous to the best interest of the of Boise.

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GENERAL CONDITIONS FOR CONSTRUCTION

2.1 Definitions

2.1.1 Communications

The contractor shall direct all communications regarding the work to the owner.

2.1.2 Contract Documents

The “contract documents” should consist of the construction contract, conditions of the contract, drawings (if required) and specifications defining the scope of work. These should be issued prior to signing the construction contract.

2.1.3 Contractor

The “Contractor” is the person or organization identified as such in the construction contract. The term “contractor” means that person or his authorized representative.

2.1.4 Contractor’s Familiarity with Site and Work

By executing the construction contract, the contractor acknowledges that he has visited the site, has familiarized himself with the local conditions under which the work is to be performed, and understands the scope of work as defined in the contract documents.

2.1.5 Contractor’s Responsibility

The contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work. Unless specifically noted otherwise, the contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery and transportation necessary for proper execution and completion of the work.

2.1.6 Delays

The contractor shall inform the owner of any delays, and causes of such, that affect the completion of the work.

2.1.7 Electrical Power and Water

The contractor shall furnish adequate electrical power and water at the construction site for the performance of the work. The contractor shall furnish, install, maintain and remove any temporary wiring or piping that may be additionally required

2.1.8 Errors in the Contract Documents

The contractor shall not be held liable to the owner for errors, inconsistencies or omissions in the contract documents. Corrective Work: The contractor shall not be held liable to the owner for errors, inconsistencies or omissions in the contract documents.

2.1.9 Execution

The construction contract should be signed and dated by both owner and contractor.

2.1.10 Layout of Work

The work shall be laid out to true lines and grades in full accord with the drawings. Surveying of lines and grades, from base line and benchmark established by the owner at the construction site and staking thereof, shall be accomplished by the contractor. Monuments shall be substantially established, protected and maintained in place by the contractor for the duration of the contract or until such time as their removal must be authorized by the owner or his representative.

2.1.11 Owner

The “owner” is the person or organization identified as such in the contract documents. The term “owner” means that person or his authorized representative.

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2.1.12 Payment Terms and Insurance

The contract documents should set forth requirements for payments and insurance.

2.1.13 Permits and Taxes

Unless otherwise provided, the contractor shall obtain and pay for all construction permits, fees, licenses, etc., as may be required by law. The contractor's contract sum shall include such federal state and local taxes as may be applicable to the performance of the contract.

Contractor shall be responsible for coordinating with the City of Boise to obtain appropriate ACHD permits and will reimburse the city for fees, fines, or penalties the city incurs due to Contractor's violation of any ACHD policy. City shall certify to ACHD that Contractor is authorized to obtain a Temporary Highway and Right-of-Way Use Permit from ACHD on City's behalf. The parties acknowledge and agree that the scope of the agency granted by such certification is limited to and conterminous with, the term and scope of the Agreement.

2.1.14 Premises

The contractor shall at all times keep the premises clean and free of accumulated waste materials and rubbish caused by the operations. At the completion of the job, the contractor shall restore all areas damaged in the course of the work, unless the Contract Documents specify differently.

2.1.15 Project

The "project" is that total construction defined in the contract documents of which the work may be the whole

2.1.16 Protection of the Public

The contractor shall erect and maintain barricades, canopies, guard, lights, and warning signs to the extent required by law or reasonably necessary for protection of the public.

2.1.17 Review of Contract Documents

The contractor shall carefully review the contract documents and shall promptly report any errors, inconsistencies or omissions the contractor may discover.

2.1.18 Schedule

Upon Project Manager's request, the contractor shall submit a schedule indicating the intended starting date of the work, the different phases and timetable, and the intended date of completion.

2.1.19 Scope of Work

The term "scope of work" includes all labor, materials, equipment and transportation to complete the work as defined in the contract documents.

2.1.20 Supervision and Direction

The contractor shall be responsible for the supervision and direction of the work. The contractor shall direct his authorized staff and/or subcontractors as deemed necessary and consistent with good construction practices.

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WORK CONDITIONS

3.1 Materials, Appliances, Employees

Unless otherwise stipulated, the Contractor will provide and pay for all materials, labor, water, dust control, tools, equipment, light, power, transportation and other facilities. The Contractor is responsible for the security of all materials, appliances and employees necessary for the execution and completion of the work. All materials will be of good quality. The Contractor will if required, furnish satisfactory evidence as to the kind and quality of materials.

3.2 Superintendence

The Contractor will assign to the project work during its progress, a competent project manager, representative of his authority, and any necessary assistance, all satisfactory to the Owner's representative.

If the Contractor and/or Contractor's project manager and employees, in the course of the work, finds any discrepancy between the plans and the physical conditions of the locality, or any errors or omissions in plans or the layout as given by survey points and instructions, Contractor will immediately inform the Owner's representative, in writing, and the Owner's representative will promptly verify the same. Any work done after such discovery, until authorized by the Owner's representative, will be done at the Contractor's risk.

3.3 Changes in Work

The Owner, without invalidating the Contract, may order additions to or deductions from the work; the contract sum adjusted accordingly. Any claim for extension of time caused thereby will be adjusted at the time of ordering such change. In giving instruction, the Owner will have authority to make minor changes in the work not involving extra costs, and not inconsistent with the purpose of the work. The City will further have authority to issue written change orders.. Except in an emergency endangering life and property, no extra work or change will be made unless in pursuant of a written order and no claim for an addition to the contract sum will be valid unless the additional work was ordered. The Contractor will proceed with the work as changed and the value of any such work or change will be determined as provided for in the Agreement.

3.4 Extension of Time

All delays in the prosecution of the work are at the risk of the Contractor, but any delay caused by an act of the Owner will entitle the Contractor to a reasonable extension of time within which to complete the Contract. The extension will be determined by the Boise Public Works Department Designee or his duly assigned representative, whose decision will be final. The Contractor will notify the Owner's representative within two days of any occurrence which in the Contractor's opinion entitles them to an extension of time for completion. Such notice will be in writing. The Owner's representative will acknowledge in writing receipt of any such claim by the Contractor within 2 days of its receipt.

3.5 Contractor Delays and Liquidated Damages

Failure of the Contractor to complete the work within the time allowed will result in damages being sustained by the Owner. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for completion of the work the Contractor will pay to the Owner, or have withheld from monies due, the sum of \$100, unless otherwise provided under "Special Provisions" if present.

Execution of the Contract under these specifications will constitute agreement by the Owner and Contractor that \$100 per day is the minimum value of the costs and actual damage caused by

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failure of the Contractor to complete the work within the allotted time, and that such sum is liquidated damages and will not be construed as a penalty, and that such sum may be deducted from payments due the Contractor if such delay occurs.

It is further agreed that in case the work called for under the Contract is not finished and completed in all parts and requirements within the number of calendar days specified, the Boise Department Name representative will have the right to increase the number of calendar days or not, as Boise Department Name representative may deem best to serve the interest of the Owner, and if Boise Department Name representative decides to increase the said number of working days, Boise Department Name representative will further have the right to charge to the Contractor, and to deduct from the final payment for the work, all or any part, as Boise Department Name representative may deem proper, of the actual cost of design, engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except that cost of final surveys and preparation of final estimate will not be included in such charges.

The Contractor will be granted an extension of time and will not be assessed for liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time agreed for the completion of the project as a result of epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that the Contractor will notify the Boise Department Name Representative in writing of the causes of delay within five (5) days from the beginning of any such delay. The Boise Department Name Project Manager will ascertain the facts and the extent of the delay, and his findings thereon will be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Boise Department Name Project Manager documentary proof that Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work and further proof in the form of supplementary progress schedules, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations.

3.6 Payments withheld prior to Final Acceptance of Work

The Owner may withhold, or in account of subsequently discovered evidence, nullify the whole or part of any certificate of payment to such extent as may be necessary to protect them from loss of account of:

- Defective work not remedied;
- Claims filed or reasonable evidence indication public filing or claims by other parties against the Contractor;
- Failure of the Contractor to make payments properly to all subcontractors or for material or labor;
- Damage to another Contractor;
- Waivers from subcontractors and material suppliers must be supplied to the Owner.

When the above grounds are removed or the Contractor provides a surety bond satisfactory to the Owner which will protect the Owner in the amount withheld, payment will be made for amounts withheld because of them.

3.7 Protection of Existing Utilities

The Contractor will be furnished such drawings as the City has available and the Contractor will be obligated directly to the City and/or any utility company for any damage or interruption of service. It will be repaired or restored promptly by the involved utility and at the expense of the

Contractor.

3.8 Assignment

The Contractor will not assign the Contract or sublet it as a whole or in part without the written consent of the Owner, nor will the Contractor assign any moneys due or to become due to them hereunder, without the previous written consent of the Owner. Assigning or subletting the Contract will not relieve the Contractor of his surety from any contract obligation.

3.9 Public Works Contractor's License Requirement ID Code 67-2310 and 54-1902

The Contractor will, upon the space provided in the bid/proposal provide the names and addresses, and the Idaho Public Works Contractor's license number of each subcontractor that the Contractor will utilize for the construction, alteration or repair of the public works here involved, as required by the provisions of Sections 67-2310 & 54-1902, Idaho Code. Failure to name subcontractor for plumbing, heating, air-conditioning and electrical as required by said Section 67-2310 will render any bid/proposal submitted by a general Contractor unresponsive and void.

In addition a State Public Works License is required prior to the bid/proposal opening for all City Construction Contracts for amounts over \$10,000.00, unless federally funded. Both Contractors and Subcontractors must have the appropriate Public Works License for the particular type of construction work involved as specified in State Code Section 54-1902. The prime contractor must perform at least 20% of the work under any City contract unless otherwise agreed to by the City. All provisions of the relevant State Code must be met in the project. On federally funded projects a State Public Works license is required by time of bid/proposal award and execution of any such contract.

The Contractor agrees that Contractor is as fully responsible to the City for the act and omissions of his subcontractors and of persons either directly or indirectly employed by them as contractor is for the acts and omissions of persons directly employed by them. Nothing contained in the contractual documents will create any contractual relation between the subcontractor and the City.

3.10 Bonds

The Contractor will furnish bonds acceptable to the City, within 7 days after date of award, for a sum equal to 100% of the amount of the contract for a Performance, and Labor and Material Bonds. Such bonds are to be conditioned on the faithful performance of the work required by these specifications. These bonds will be from the same surety.

3.11 Default, Termination and Forfeiture

If the Owner is compelled to incur any expenses including reasonable attorney's fees in instituting and prosecuting any action of proceeding by reason of any default of Contractor hereunder, the sum or sums so paid by Owner with all interest, costs and damages will be deemed to be additional costs hereunder and will be due from Contractor to Owner on the first day of the month following the incurring of such respective expenses. This provision will be deemed to be a separate contract between the Owner and the Contractor and will survive any default, termination or forfeiture of this Contract.

3.12 Compliance with City Codes

The Contractor agrees to comply with all specifications, the Boise City Code and Ordinances, and statutes of the State of Idaho relating to such work and construction. In case of a dispute arising hereunder, the Boise City Code will govern.

In addition, each Contractor will certify complete compliance with all Idaho statutes with specific reference to the Public Works Contractors State License Law, Title 54, Chapter 19, Idaho Code, as amended, in connection with all work pertaining to all claims for payment under the terms of this contract.

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Notice of Amendment of Public Works Contractors License Act Title 54, Chapter 19, Idaho Code, as Amended

The 37th Session of the Idaho Legislature passed and the Governor signed into law, effective March 27, 1963, House Bill 283 as amended, which amends Title 54, Chapter 19, Idaho Code, by adding a new section to the Public Works Contractors License Act, which reads as follows:

54-1904A - Within 30 days after any public works Contractor who is required to be licensed pursuant to this chapter has been awarded a contract for construction to be performed with the State of Idaho involving the expenditure of any public moneys, the contract awarding agency will file with the tax collector a signed statement showing the date on which such contract was made or awarded, the names and addresses of home offices of the contracting parties, including all subcontractors, the state of incorporation if the party is a corporation, the project number and a general description of the type and location of the work to be performed, the amount of the prime contract and all subcontracts, and all other relevant information which may be required on forms which may be prescribed by the tax collector.

Every Contractor and subcontractor whose name appears on any such notice will be required to file income tax returns with the State Tax Collector and to pay all income taxes which may be due thereon pursuant to law of all years in which any public moneys were received by them in connection with any construction work which was performed within the State of Idaho. A failure to pay any income taxes which may be due thereon, in addition to all other penalties therefore as provided by law, will constitute grounds for suspension or revocation of license as in this act provided.

3.13 Idaho Labor Preference:

This project is subject to the provisions of the Idaho Code 44-1001 and 44-1002, requiring the employment of ninety-five percent (95%) bona fide Idaho residents and providing for a preference in the employment of bona fide Idaho residents.

3.14 Preference for Idaho Domiciled Public Works Contractors:

Idaho Code 67-2348 requires the City to apply a preference in determining which contractor for public works submitted the lowest responsive bid. If the contractor who submitted the lowest dollar bid is domiciled in a state which has preference law which penalizes Idaho domiciled contractors, then the City must apply the preference law (percentage amount) of that domiciliary state to the Contractor's bid.

3.15 Payments under City Contract

Compensation for City projects is paid by City warrants against budgeted funds and issued in accordance with the contract documents. City will withhold 5% retainage from each pay application until Final Acceptance. Payment will be made within 35 calendar days of City approval of pay application.

3.16 Inspection of Site

Each Bidder should visit the site of the proposed work and fully acquaint themselves with the existing conditions there relating to the construction and labor and should fully inform themselves as to the facilities involved, the difficulties and the restrictions attending the performance of the Contract. The City will be justified in rejecting any claim based on facts regarding which should have been on notice as a result thereof.

3.17 Asbestos

When asbestos is discovered in any project, it shall be handled and disposed of in a manner conforming to the requirements of all local, state or federal agencies. Contractor shall comply with all federal, state, and local hauling and disposal regulations. In addition to the requirements of the General Conditions, Contractor's safety requirements shall conform to ANSI A10.6.

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Contractor shall provide City with a copy of the Waste Shipment Record after proper disposal of asbestos material. Disposal procedures, waste shipping record and landfill receiving forms are available from the City upon request.

3.18 Termination by the Owner

If the Contractor is adjudged as bankrupt, or if makes a general assignment for the benefit of this insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, labor, or persistently disregards laws, ordinances, or the instructions of the Owner's representative and the Owner, or otherwise be in substantial violation of any provision of the Contract, then the Owner may without prejudice to any right or remedy and after giving the Contractor and his Surety 7 days written notice, terminate the employment of the Contractor and take possession of the site and all materials, provided for the completion of the project, and may finish the work by whatever method he may deem expedient.

In such cases the Contractor will not be entitled to receive any further payment until work is finished. If the unpaid balance of the contract price will exceed the expense of finishing the work, including compensation for additional administrative services, such excess will be paid to the Contractor. If such expense will exceed such unpaid balance, the Contractor and/or his surety will pay the difference to the Owner.

3.19 Waiver of Liens

It is agreed that no lien will be at any time be filed against the premises upon which the work is performed, or any part thereof, by Contractor or any of his subcontractors or other person employed by or furnishing labor, services, equipment or materials to Contractor or any of his subcontractors for, in or about the performance of the work. This clause will be inserted in all of the Contractor's or any of his subcontractor's purchase orders and material agreements.

3.20 Indemnification and Insurance (See Supplemental General Conditions)

The Contractor will provide (from insurance companies acceptable to the City) the insurance coverage designated hereinafter and pay all costs. The Idaho Tort Claims Act sets a limit of \$500,000 as a minimum requirement for liability coverage. The Contractor will also provide (from insurance companies acceptable to the City) Builder's Risk coverage in an amount equal to the value of the project. The Contractor will pay all costs.

Any insurance policy, or certificate of insurance, will name the City as a named insured where appropriate, and such insurance policy or certificate of insurance will be kept and maintained in full force and effect at all times during the term or life of this contract. The insurance policy or certificate of insurance must be filed with Purchasing prior to commencing work under this contract and no insurer will cancel the policy or policies or certificate of insurance without first giving 30 days written notice thereof to Contractor and City, but the Contractor may, at any time, substitute a policy or policies or certificate of insurance of a qualified insurance company or companies of equal coverage for the policy or policies or certificate then on file with the Department.

The Contractor will indemnify and save and hold harmless the City of Boise from and for any losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses caused or incurred by the Contractor, its servants, agents, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct of the City of Boise or its employees. In addition, the Contractor will maintain, and specifically agrees that it will maintain, throughout the term of the Agreement, liability insurance in which the City of Boise will be named insured in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance will not be deemed a limitation of the covenants to indemnify and save and hold harmless the City of Boise and if the

City Hall Remodel of Boise City Utility Billing

City of Boise becomes liable for an amount in excess of the insurance limits, herein provided, the Contractor covenants and agrees to indemnify and save and hold harmless the City of Boise from and for all such losses, claims, actions, or judgments for damages or liability to person or property.

The Contractor will provide the City of Boise with a Certificate of Insurance or other proof of insurance evidencing the Contractor's compliance with the requirements of this paragraph and file such proof of insurance with the City of Boise, Idaho. In the event the insurance minimums of the Idaho Tort Claims Act are changed, the Contractor will immediately submit proof of compliance with the changed limits.

3.21 Workers' Compensation Insurance

Worker's Compensation Insurance, as listed by the Idaho Industrial Commission, must be valid in Idaho for the entire length of the project contracted by the City of Boise or supplier accepts full responsibility for all related tax penalties. The Contractor will have and maintain during the life of this contract, the statutory Workers' Compensation, regardless of any number of employees or lack thereof, for all those including themselves to be engaged in work on the project under this contract, and, in case any such work is sublet, the Contractor will require the subcontractor to provide Workers' Compensation Insurance for themselves and any/all the latter's employees to be engaged in such work. Proof of insurance must be provided to Owner prior to the start of work.

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SITE SECURITY

4.1 GENERAL

- A. This section covers Contractor work requirements regarding Site security.

4.2 SPECIFIC SECURITY REQUIREMENTS

- A. Contractor to limit staff access to the project site and monitor all personnel entering/leaving the Work Site during construction hours.
- B. Contractor to keep stored materials within the designated staging area.
- C. Contractor and subcontractors be aware that this work is occurring on an active wastewater treatment plant site. Be prepared to show identification to City staff if requested.

4.3

- A. Conduct of Contractor and Subcontractor employees: Employees while performing work under this Contract will not:
1. Remove any City of Boise property, equipment, monies, forms, or any other item from their place.
 2. Engage in horseplay or loud boisterous behavior.
 3. Play amplified sound equipment.
 4. Be under the influence of alcohol or drugs. If an employee arrives to the Work Site and their actions suggest intoxication, this person will be asked to confine their presence to a waiting area while a contract supervisor is contacted to the purpose of escorting the employee away from the building safely.
 5. Smoke within the buildings, within 20' of an entrance, or on property unless a specific smoking area has been designated.
 6. Bring weapons to the Job Site (such as firearms, knives unrelated to the work, etc.)
 7. Bring unauthorized personnel to Job Site (such as relatives, friends, guests, and children).
 8. Turn on or off or use any City equipment other than Contractor's equipment.
 9. Use any City telephone, unless pre- approved at a specific designation.
 10. Open any desk, file cabinet, storage cabinet, or refrigerator.
 11. Disturb or remove any article from desks.
 12. Consume any food or beverage, other than that brought with the employee or purchased from vending machines, and only in areas designated by the building management for regular breaks.
 13. Engage in long conversations with visitors or other individuals.
 14. Take photographs of the building or its contents.
 15. Remove any documents, records, forms, or paper of any kind which is not either in trash cans or clearly marked as trash.
 16. Engage in any activity which is not in the best interest of City or is otherwise detrimental to the performance of this Contract.
- B. Discipline or Discharge of Employees: Contractor shall immediately transfer any employee, subcontractor, vendor, or delivery personnel who violate the above conduct requirements and prohibit them from accessing the Site. A request by City to transfer an employee shall not constitute an order to discipline or discharge the employee. All

City Hall Remodel of Boise City Utility Billing

actions taken by the Contractor in regards to employee discipline shall be at the sole discretion of the Contractor. The department shall be held harmless in any disputes the Contractor may have with the Contractor's employees. This shall include, but is not limited to, charges of discrimination, harassment, and discharge without just cause.

C. Building/Facility Access and Access Cards:

1. Upon successful background check (see requirements below), the City will issue access cards to Contractor and/or Subcontractor employees who will be working on site for the duration of the project. Access cards will provide access to necessary locations within the buildings or areas designated in the project.
2. The City will issue identification cards for employees, subcontractors, vendors, and delivery staff who are only occasionally engaged at the Site (such as less than 4 days a month). Such cards will be for identification only (no access will be granted). Contractor must provide escort and direct supervision for such subcontractors.
3. Contractor and subcontractors are responsible for conduct of all employees, vendors, delivery personnel, etc.
4. Security identification/access cards shall be worn at all times. Personnel found onsite without identification/access cards are to be immediately removed from Site.
5. Security identification/access cards shall be provided and issued by the City. Contractors shall schedule arrangements with Contract Administrator and Security Coordinator. The City will supply identification/access cards at no charge for the first year. Additional/replacement photo identification/access cards because of negligence or loss will be at the cost of \$12 each, which will be the responsibility of the Contractor.
6. Contractor must promptly report any lost keys or identification/access cards to the Contract Administrator or Security Coordinator (433-5609).
7. Identification/access cards are the sole property of the Owner and must be surrendered upon the completion of the Work to the Contract Administrator or Security Services (433-5609).

D. Background Checks:

1. The background checks shall run criminal history and check for outstanding warrants (both local and national), verification of U.S. citizenship or appropriate work visa, and known ties to criminal or terrorist groups.
2. Employees who have resided in Idaho for 10 years may obtain a City conducted background check at no cost. Alternately, for all other employees receiving access cards, Contractor shall arrange and pay for background checks performed through the Idaho State Police. Personnel who do not have outstanding warrants, are legally able to work in the United States and do not have ties to criminal or terrorist groups are eligible to obtain access cards and gain full access to the site.

E. Other Security Requirements:

1. Contractor is responsible for building/site security during construction work hours. Doors and windows will remain locked and secured at all times. When

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this is impractical (such as delivering materials, ventilating, etc.), Contractor must post staff to continually monitor the unsecured areas. At the end of shift, Contractor shall perform an inspection to ensure all doors are locked and secured.

Contractors will ensure that all employees working within City facilities can read and understand warning signs that are written in English. Contractors shall provide and equip each shift supervisor with a communication device such as a cell phone or similar independent communication device.

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EQUAL, APPROVED EQUAL, OR EQUIVALENT REQUEST FORM

TO: Boise City, Purchasing, 150 N Capitol Boulevard, Boise, ID 83702

We hereby submit for your consideration the following product instead of the specified item for the above project:

Specification	Proposed "Or Equal" Product

Attach complete technical data, including laboratory tests, if applicable.

Differences between "Or-Equal" request and specified item?

What affect does "Or-Equal" request have on the use of the product?

Bidder guarantees that proposed and specified items are:

- ☐ Same
☐ Different (explain on attachment)

The undersigned certifies that the function and quality of “or equal” products are equivalent or superior to the specified product.

Company:

Address (City, State, Zip)

Submitted by: (Please Print)

Email:

Signature:

-----City of Boise to Complete-----

<input type="checkbox"/>	Accepted	Bv:
<input type="checkbox"/>	Not accepted	Date:
<input type="checkbox"/>	Accepted as noted	Remarks:
<input type="checkbox"/>	Received too late	

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BIDDER'S CHECKLIST

The Bidder's Check List is offered to assist the prospective bidder in checking his/her Bid. This checklist does not relieve the bidder from properly completing his/her Bid. Check off when completed:

1. _____ Are all blank spaces filled out on Bid Form?
2. _____ Has Bidder included additional information required?
3. _____ Have questions arising from the bidding, contract, specifications or plans been submitted to the proper authority and resolved in the proper manner?
4. _____ Are Bid amounts shown correctly as well as extensions and totals? Recheck for errors or omissions. Lump sum and any alternate prices must be shown in words and figures.
5. _____ Are authorized signatures properly affixed to the Bid form, giving also title, and Idaho Public Works Contractor license number?
6. _____ Have all Addenda been received and acknowledged with the proper signature on the Bid Form?
7. _____ In order for a Bid to be considered, the Bid form, Bid Security, naming of subcontractors form, and other required attachments must be placed in a properly addressed sealed envelope and delivered to the issuing office prior to the time designated for the bid opening.
8. _____ Has Bid Security in the amount of 5 % been enclosed?
9. _____ Have all subcontractors stipulated in Section 67-2310, Idaho Code, to whom work will be awarded been listed, as well as their Idaho Public Works Contractor license numbers?
10. _____ Has Bidder performed examinations in accordance with the Instructions to Bidders?
11. _____ Has bidder included in his/her bid all fees for inspection and permits except for those to be paid for by the Owner?

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BID FORM

THIS BID IS SUBMITTED TO:

DELIVER TO:

Boise City Purchasing Office
150 N. Capitol Blvd.
Boise, ID 83702

MAIL TO:

Boise City Purchasing Office
PO Box 500
Boise, ID 83701

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 45 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given issuing office written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by issuing office is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

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- J. Bidder is responsible for ascertaining the existence of any addenda and the contents thereto.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
- 5.01** Bidder will complete the Work in accordance with the Contract Documents for the lump sum given, which includes all taxes.
- 6.01** Bidder agrees that the Work will be substantially completed and fully completed ready for final payment in accordance the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02** Not used
- 6.03** Bidder agrees to comply with Idaho Code 44-1001 through 44-1006, regarding employment of Idaho residents.
- 7.01** The following documents are attached to and made a condition of this Bid:
- A. Required Bid security;
- B. Bidder shall include with the Bid the names and addresses, and Idaho Public Works Contractor License Numbers of the Subcontractors who shall, in the event the Bidder secures the Contract, subcontract the plumbing, heating and air-conditioning work, and electrical work under the general Contract.
- 8.01** The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

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SUBCONTRACTORS

Per Idaho Code, 67-2310, Bidder shall include in his or her Bid the names and address, and Idaho Public Works Contractor License Number of the Subcontractors who shall, in the event the Bidder secures the Contract, subcontract the plumbing, heating and air-conditioning work, and electrical work under the general Contract. Failure to name Subcontractors as required shall render any Bid submitted by the Bidder unresponsive and void.

In the event that the general contractor intends to self-perform the plumbing, HVAC or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work.

The general contractor shall demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the bid form.

BIDDER NAME: _____

EMAIL: _____ **PHONE:** _____

Name and Address

License Number

PLUMBING:

_____	_____

HVAC:

_____	_____

ELECTRICAL:

_____	_____

OTHER:

_____	_____

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RETURN IN SEALED ENVELOPE

BASE BID:

Bidder agrees to perform all the work described in the Specification and shown on the plans for the sum of:

(\$ _____) Dollars; in lawful money of the United States.

(Amounts shall be shown in both words and figures; in event of discrepancy, the amount in words shall govern.)

Add Alternate:

As per drawing for millwork (sheets A 2.1 & A3.1)

_____ \$ _____

BID SIGNATURE(S):

SUBMITTED on _____, 2016.

Idaho Public Works Contractor License No.

Expiration Date

Contractor

Signature

Name (Typed or Printed)

Title

Address

City, State, Zip

Email

Phone No.

Fax No.

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BID BOND

(Return this or other executable surety)

KNOW ALL MEN BY THESE PRESENTS, that we, the above signed, as Principal, and _____ as Surety, are hereby held and firmly bound unto as Owner in the penal sum of _____, which is 5% of the amount bid, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 2016 The Condition of the above obligation is such that whereas the Principal has submitted to _____ a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the construction of new and other miscellaneous work as set forth in the plans and specifications for BID NUMBER. More specifically, this work includes and other related work.

NOW, THEREFORE,

The Bond will become null and void:

(a) If said BID will be rejected.

(b) If said BID will be accepted and the Principal will execute and deliver a contract in the Form of Contract attached hereby (properly completed in accordance with said BID) and will furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and will in all other respects perform the agreement created by the acceptance of said BID.

OTHERWISE:

The Bond will remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder will, in no event, exceed the penal amount of this obligation as herein stated.

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND will be in no way impaired or effected by an extension of time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal

Surety

By

**AIA STANDARD A101
FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

(See sample on AIA web site)

CONTRACTOR'S AFFIDAVIT CONCERNING TAXES

STATE OF _____)

COUNTY OF _____)

Pursuant to the Idaho Code, Title 63, Chapter 15, I, the above signed, being duly sworn, depose and certify that all taxes, excises and license fees due to taxing units in the State of Idaho, for which I or my property is liable then due or delinquent, have been paid, or secured to the satisfaction of the respective taxing units.

(Contractor Name)

(Address)

(City and State)

(Signature)

Subscribed and sworn to before me the _____ day of _____, 2016.

(Notary Republic)

(City and State)

Commission Expires: _____

PERFORMANCE BOND

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS:

That _____
(Here insert the name and address or legal title of Contractor)

as Principal, hereinafter called Contractor, and _____,

and as Surety, hereinafter called Surety, held and firmly bond unto _____,

(Here insert name and address of legal title of the Owner)

as Obligee, hereinafter called Owner, in the amount of _____ Dollars

being 100% of the contract price in lawful money of the United States, for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, _____ enter into a contract

contract with Owner of _____

in accordance with drawings and specifications prepared by DEPARTMENT NAME, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor will promptly and faithfully perform said contract, then this obligation will be null and void; otherwise it will remain in full force and effect.

The Surety hereby waives notices of any alteration or extension of time made by the Owner.

Whenever Contractor will be, and is declared by Owner to be in default under the Contract, the Owner's obligations hereunder, the Surety may promptly remedy the default, or will promptly:

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there would be default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph, will mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Performance Bond (cont)

Any suit under this bond must be instituted before the expiration of 2 years from the date on which final payment under the contract falls due.

No right of action will accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and Sealed this _____ day of _____, A.D. 20 _____

(Seal)

In the presence of: _____
(Principal)

(Title)

(Seal)

By: _____
(Surety)

(Title)

Note: This form or a reasonable facsimile is to be completed and delivered to City of Boise Purchasing Office when contracts are signed.

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That we _____
(Here insert the name and address or legal title of Contractor)

as Principal, and the _____ corporation,

as Surety, are held and firmly bound unto Boise City, a Municipal Corporation in the State of Idaho.

As Oblige, in the sum of _____ Dollars,

being 100% of the contract price, in lawful money of the United States, for which sum, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20 ____ enter into a contract

WHEREAS, on the _____ Day of _____, 20 _____, the principal entered into a

contract with the Oblige for _____

Which contract is by reference made a part hereof and, hereafter referred to as the Contract:

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the principal will pay all laborers, mechanics, subcontractors, material suppliers and all persons who will supply said Principal or said subcontractors with provisions and supplies for the carrying on of such work, then this obligation will be null and void; otherwise to remain in full force and effect.

Signed and Sealed this _____ **day of** _____, **A.D. 20** _____

Principal

Insurance Company

Attorney-in-Fact

By: _____

Note: this form or a reasonable facsimile is to be completed and delivered to City of Boise Purchasing Office when contracts are signed.

AIA[®] Memorandum

Insurance Cancellation Notice Requirements

In September of 2009, the Association for Cooperative Operations Research and Development (ACORD) amended its Form 25 Certificate of Liability Insurance (ACORD Form 25) as it relates an insurer's duty to give notice of cancellation of an insurance policy. The changes, and related rulings by state insurance administrative agencies, make it difficult or impossible for construction industry professionals to satisfy some requirements found in several AIA Contract Documents. Due to these developments, edits may be required to the standard text of the following AIA Contract Documents:

A107–2007	Sections 17.1 and 17.3.2
A141–2004 Exhibit A	Sections A9.10.2, A11.2.3 and A.11.4.6
A142–2004 Exhibit A	Section A9.10.2
A142–2004 Exhibit E	Section E.1.3
A201–2007	Sections 9.10.2, 11.1.3 and 11.3.6
A201–2007 SP	Sections 9.10.2, 11.1.3 and 11.3.6
A232–2009	Sections 9.10.2, 11.1.3 and 11.3.6
A232–2009 SP	Sections 9.10.2, 11.1.3 and 11.3.6
A251–2007	Section 13.1.3
A295–2008	Sections 10.2.2, 11.1.3 and 11.3.6
A401–2007	Section 13.3
A401–2007 SP	Section 13.3
A441–2008	Section 13.3
C101–1993	Section 9.3
C191–2009 Exhibit A	Sections A12.9.2 and A14.1.3
C196–2008	Section 2.4.5
C197–2008	Section 2.7.5
C198–2010	Section 2.9.3
C199–2010 Exhibit A	Sections A.5.26.2.2, A6.1.3 and A6.3.6

For more information, please visit AIA.org and read a memorandum entitled “Changes in the Insurance Industry Impact Notice of Policy Cancellation.” This memorandum (1) provides an overview of the ACORD Form 25 changes and related rulings by state agencies, and (2) suggests edits that users might incorporate into standard AIA Contract Documents to respond to these changes and rulings.

To read the memorandum, visit the AIA Contract Documents Reference Material Web site, www.aia.org/contractdocs/reference. At the bottom of the **Reference Material** page, click **Other Reference Material**. On the Other Reference Material page, the memorandum is listed under the subheading “Corrections, Modifications and Important Information.”

You may also access the memorandum by typing the following URL into your Web browser:

www.aia.org/groups/aia/documents/pdf/aiab101644.pdf

AIA Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City Hall Remodel of Boise City Utility Billing GBP073
150 N CAPITOL BLVD

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:

(Name, legal status and address)

CITY OF BOISE
150 N CAPITOL BLVD
BOISE ID 83702

THE ARCHITECT:

(Name, legal status and address)

CSHQA
200 BROAD ST
BOISE ID 83702

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 CONCEALED OR UNKNOWN CONDITIONS

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

§ 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce

other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor. Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment 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 amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's

risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the 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 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

AIA GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

These supplemental conditions have been modified for this project

SUPPLEMENTARY GENERAL CONDITIONS

The General Conditions are hereby modified in accordance with these Supplementary General Conditions. All provisions of the General Conditions not modified or voided by these Supplementary General Conditions shall remain in effect.

The following supplements modify, change, delete from or add to the "General Conditions of the Contract for Construction," AIA Document **A201 - 2007 Edition**. Where any Article of the General Conditions is modified or by paragraph, subparagraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that Article, paragraph, subparagraph or clause shall remain in effect.

General Conditions apply with equal force to the contractor, all subcontractors, work, extra work and the like that may be specified herein, or performed in or about building or site under this Contract.

Article 1.2 Correlation and Intent of the Contract Documents:

ADD THE FOLLOWING PARAGRAPH:

1.2.4 No scale measurement shall be used as a dimension to work to. Figures on all drawings, as well as the detail drawings themselves, are subject in every case to Contractor's verification and to measurements of adjacent or incorporated work. All such measurements necessary shall be made before undertaking any work dependent upon such data. If Contractor determines that dimensions are incorrect or that additional information is needed, a request for information shall be submitted.

ADD Article 1.7 Terminology

ADD THE FOLLOWING PARAGRAPHS:

- 1.7.1 The word "furnish" shall mean to supply and deliver services, materials or equipment to the site, ready for use and in usable condition.
- 1.7.2 The word "install" shall mean to put into use or place, in final position, said services, materials, or equipment complete and ready for use.
- 1.7.3 The words "perform" or "provide" shall mean to furnish and install services, materials or equipment complete and ready for use.
- 1.7.4 "Command" or "imperative" type language is used in the Contract Documents. Such language refers to and is directed to the Contractor.

Article 2.1 General

MODIFY PARAGRAPH 2.1.1 as follows: Remove the words "Except as otherwise provided in Section 4.2.1" from the second to last sentence.

ADD PARAGRAPH 2.1.3 as follows: Owner will furnish an Owner's Representative to represent the Owner in all matters. Owner's Representative will observe the progress and quality of the work and aid in coordinating with the Architect. Owner's Representative will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, or procedures of construction, for the Contractor's safety precautions and programs, or for the Contractor's compliance with laws and regulations. Owner's Representative will not make changes in the work without concurrence of the Architect.

Article 2.2 Information and Services Required of the Owner:

REPLACE FIRST SENTENCE IN 2.2.3 with the following: The Owner and Architect shall make available to the Contractor material in their possession pertaining to surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

REPLACE PARAGRAPH 2.2.5 with the following: Owner will furnish up to three (3) sets of Contract Documents to the Contractor free of charge. Any additional Contract Documents will be at Contractor's expense.

Article 3.1 General

ADD PARAGRAPH 3.1.4 as follows:

3.1.4 Normal working hours shall be between 7:00 am and 6:00 pm on a regular scheduled basis, excluding federal holidays and weekends. Work outside of normal working hours must be approved by Owner, and such approval may not be reasonably withheld.

Article 3.2 Review of Contract Documents and Field Conditions by Contractor:

ADD TO PARAGRAPH 3.2.1 the following: Contractor's failure to visit the site prior to bidding shall in no way relieve Contractor from necessity of furnishing all material or performing all work that may be required to complete the work in accordance with Contract Documents without additional cost to the Owner.

MODIFY PARAGRAPH 3.2.2 as follows: Add the following sentence to be the second from last sentence in the paragraph: "Contractor shall make requests for information in a timely manner such as will allow ample time for resolution without causing delays in the work."

Article 3.3 Supervision and Construction Procedures

ADD PARAGRAPH 3.3.4 as follows:

3.3.4 Contractor shall provide quality control, which shall include the initial and subsequent inspections of both Contractor's and subcontractor's work, to ensure that the work conforms to the Contract Documents.

Article 3.4 Labor and Materials:

ADD THE FOLLOWING PARAGRAPHS:

3.4.2.1 After the Contract has been executed, the Architect will consider a request for the substitution of products in place of those specified only under one or more of the following conditions:

- 1) The formal request for the substitution is within of 10 days after the Contract has been executed.
- 2) Required product cannot be supplied in time for compliance with Contract time requirements.
- 3) Required product is not acceptable to governing authority, or determined to be non-compatible, or cannot be properly coordinated, warranted or insured, or has other recognized disability as certified by Contractor.
- 4) Substantial advantage is offered to the Owner after deducting off-setting disadvantages including delays, additional compensation to Architect/Engineer for redesign, investigation, evaluation and other necessary services, and similar considerations.

3.4.2.2 By making requests for substitutions based on Clause 3.4.2.1 above, the Contractor:

- 1) Represents that they have personally investigated the proposed substitute product or system and determined that it is equal or superior in all respects to that specified;

- 2) Represents that they will provide the same warranty for the substitution that he would for that specified;
 - 3) Certifies that the cost data presented is complete and includes all related costs under separate contracts, but excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
 - 4) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- 3.4.2.3 For any substitution requests granted under 3.4.2.1.1, Contractor will be required to reimburse Owner for any costs to redesign, investigate and evaluate the substitution request.

ADD TO PARAGRAPH 3.4.3 the following sentence: "Work is in a secured location. All site contractor staff must successfully pass Criminal Justice Information System background check (security policy 5.2). Any staff that does not pass such background check may not be employed on the site. Owner will arrange for and conduct such background checks at no cost to Contractor."

Article 3.5 Warranty

ADD TO PARAGRAPH 3.5 the following sentence: This warranty is not limited by the contractor's obligation to repair defects appearing within one (1) year of Substantial Completion.

Article 3.7 Permits, Fees, Notices and Compliance with Laws

ADD THE FOLLOWING PARAGRAPHS:

3.7.1.1 Prior to commencement of any work, copies of all permits required for such work shall be presented to the Owner for verification, including all related subcontractor work and trade permits.

3.7.1.2 Owner will pay impact fees, utility connection fees, and the Building Permit fee, including the Plan Check fee. Contractor shall pay for all other costs including, but not limited to, licenses, permit fees, trade permit fees, etc.

MODIFY PARAGRAPH 3.7.4 as follows: Change the number of days from "21" to "three (3)".

ADD THE FOLLOWING PARAGRAPHS:

3.7.6 Prior to entering into a contract, the Contractor shall be authorized to do business in the state and shall submit a properly executed Contractor's Affidavit Concerning Taxes.

3.7.7 As required by Idaho Code 541904A, the City will notify the State Tax Commission that the contract has been awarded and will provide the name and address of the Contractor.

Article 3.12 Shop Drawings, Product Data and Samples

ADD THE PARAGRAPH 3.12.11 as follows: The Owner shall review all Contractor submittals. The Owner is entitled to obtain review(s) from the Architect as determined by the Owner.

Article 4.2 Administration of the Contract

MODIFY PARAGRAPH 4.2.1 as follows: The Owner will provide administration of the Contract as described in the Contract Documents. Delete the remaining information.

MODIFY PARAGRAPH 4.2.4 as follows: Replace first sentence with "Except as otherwise

provided in the Contract Documents or when direct communications have been specially authorized, the Owner, Contractor and Architect shall endeavor to maintain joint communications involving all three parties about matters arising out of or relating to the Contract.”

MODIFY PARAGRAPH 4.2.11 as follows: Replace first sentence with “The Architect will interpret and provide opinions on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.”

Article 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

MODIFY 5.2.1 as follows: In the first sentence, replace the words “as soon as possible” with “within fourteen (14) days of contract award.”

Article 5.3 Subcontractual Relations

ADD THE FOLLOWING PARAGRAPH:

5.3.1 Whenever the provisions of any section of the Specifications may conflict with any agreement or regulations of any kind in force among members of any trade association, union or council which regulates or distinguishes that work shall or shall not be included in the work of any particular trade, the Contractor must make all necessary arrangements to reconcile any such conflict without recourse to the Owner.

Article 7.1 General:

ADD PARAGRAPH as follows:

7.1.4 Change Orders must be authorized by Owner in writing prior to beginning the additional work. For changes which increase the Contract Price, singularly or cumulatively, by amounts in excess of those outlined in the City of Boise Municipal Code, Section 1-11, Owners Approval shall mean approval of the Boise City Council.

Article 7.2 Change Orders:

ADD THE FOLLOWING PARAGRAPH:

7.2.2 The Contract Sum and Contract Time may only be changed by a properly authorized Change Order. Except in the case of an emergency, as provided for in Section 10.4, Contractor shall not be entitled to an increase in the Contract Sum or Time in the absence of such a Change Order. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change any and all adjustments to the Contract Sum and Contract Time.

Article 7.3 Construction Change Directives:

ADD TO PARAGRAPH 7.3.1 the following sentence: “A Construction Change Directive will not change the Contract Sum or Contract Time, but is evidence that the parties expect that a Change Order will be subsequently issued to address the changed contained in the Construction Change Directive.”

ADD TO PARAGRAPH 7.3.5 the following sentence: “Contractor shall advise of agreement or disagreement in writing within three working days.”

MODIFY PARAGRAPH 7.3.6 as follows: Replace the last sentence with the following: “Such agreement shall be effective immediately and shall be recorded as a Change Order when agreement is reached on adjustments to Contract Sum and Contract Time, per Section 7.3.10.”

DELETE PARAGRAPH 7.3.7 AND REPLACE WITH the following:

7.3.7 If the parties agree, or if the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the adjustment 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 reasonable allowance for general conditions, overhead, profit and all other indirect costs including home office and field as set forth herein. In all such instances in which the cost of Work is relevant, the Contractor shall keep and present full and complete records of all costs incurred, or costs avoided, and shall present to the Owner and Architect an itemized accounting thereof in the form as instructed, by the Owner. Such form shall include a Daily Force Account record detailing labor hours expended, materials utilized, equipment utilized, etc. Such form shall be submitted daily on the day following the performance of the affected Work. The Contractor shall notify the Owner within a reasonable time prior to the start of the change or additional Work, so that the Owner can assure that it is properly inspected and reviewed. The Daily Force Account form will be a form approved by the Owner prior to construction. The Daily Force Accounts costs shall be limited to the provisions in Section 7.5.

DELETE PARAGRAPH 7.3.9

ADD THE FOLLOWING PARAGRAPH:

7.3.11 Each request for a Change Order for extra compensation under this paragraph shall be completed and delivered to the Owner within thirty (30) calendar days after such change or additional work is completed.

ADD THE FOLLOWING PARAGRAPH:

7.3.12 The Contractor shall include equivalent provisions to subparagraph 7.3.6 in each subcontract and purchase order the Contractor may issue with respect to the Work.

ADD TO PARAGRAPH 7.4 the following: If Contractor believes that such order may involve a change in Contract Sum or Time, Contractor shall provide notice to Owner prior to initiating the work.

ADD Section 7.5 Cost Of the Work

ADD PARAGRAPH 7.5 as follows:

7.5 COST OF THE WORK: Unless otherwise mutually agreed, costs for Change Orders and Construction Change Directives shall be limited to the following items:

1. Actual labor hours worked by Contractor and any subcontractors, charged to the Project at the actual hourly rate paid the employee performing the Work, plus the actual costs for fringe benefits, payroll taxes and insurance. The Contractor and subcontractor's billing rates for labor rates, payroll taxes, payroll insurance and fringe benefits will be submitted and approved by the Architect and Owner prior to subcontractor's commencement of Work. Labor hours shall include foremen and other personnel directly performing the changed work. All costs above the foremen level shall be reflected in the overhead costs in 7.5.4.
2. Cost of materials, or equipment incorporated into the work including sales tax and cost of delivery; at the actual cost thereof as documented by actual material supplier invoice slips;
3. Actual rental and operating costs for equipment, and actual equipment operating hours. The hourly rate will be based upon the actual rental rate charged the Contractor or subcontractor by an unrelated third party; or if the equipment is Contractor or subcontractor owned, then one-half the current Blue Book hourly rental rate plus full value Blue Book estimated operating costs per hour. Small tools and consumables are defined as an item of equipment or tool which initial cost is five hundred dollars

- (\$500.00) or less and is paid as part of subparagraph 7.3.7.4; and if any equipment is not listed in the Blue Book, then such rental rate shall be agreed upon by the parties;
4. All costs of field office supervision, superintendent and above, taxes, insurance, bonds, small tools, administrative expense and all other field or home office cost directly or indirectly attributable to the change, and profit, will be paid as set forth as follows:
 1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost of subparagraphs 7.5.1, 7.5.2 and 7.5.3.
 2. For the Contractor, for Work performed by its subcontractor, five percent (5%) of the amount due the subcontractor.
 3. For each subcontractor or sub-subcontractor involved, for Work performed by that subcontractor's own forces, ten percent (10%) of the cost of subparagraphs 7.5.1, 7.5.2 and 7.5.3.
 4. There will not be allowed more than three percentages, not to exceed the maximum percentages shown above, regardless of the number of tiered subcontractors.
 5. Deductions or credits, calculated on a similar basis to the above subparagraphs except that subparagraph 7.5.4 shall not apply.

Article 8.1 Definitions:

CHANGE SENTENCE IN PARAGRAPH 8.1.1 as follows: Modify sentence to read as follows: "... for Substantial Completion and Final Completion of the Work."

CHANGE SENTENCE IN PARAGRAPH 8.1.2 as follows: In the first sentence, after the word "Agreement" add, the words "or Notice to Proceed."

ADD TO PARAGRAPH 8.1.3 as follows: "The date of Final Completion is the date that the project is certified by the Architect as ready for Final Payment, in accordance with Section 9.10."

Article 8.2 Progress and Completion:

CHANGE SENTENCE IN PARAGRAPH 8.2.3 as follows: Modify sentence to read as follows: "...and shall achieve Substantial Completion and Final Completion within the Contract Time."

Article 8.3 Delays and Extensions of Time:

DELETE PARAGRAPHS 8.3.1, 8.3.2 and 8.3.3 AND REPLACE with the following:

- 8.3.1 The Contract Time will not be extended due to delays within the control of the Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.
- 8.3.2 When Contractor is prevented from completing any part of the work within the Contract Times due to delay beyond the control of the Contractor, and if a request or claim was made in accordance with other provisions of the Contract, then the Contract Time will be extended in an amount equal to the time lost. Delays beyond the control of the Contractor include but are not limited to acts or neglect by Owner or Architect, acts or neglect of utility owners, fires, floods, epidemics, abnormal weather conditions or acts of God.
 - 8.3.2.1 Where Contractor is prevented from completing the work due to delay beyond the control of both Owner and Contractor, an extension of the Contract Time is the sole and exclusive remedy for such delay. Delays beyond the control of the Owner include but are not limited to concealed or unknown conditions, acts or neglect of utility owners, fires, floods, epidemics, abnormal weather conditions or acts of God.
- 8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Contractor shall immediately provide notice of delays or potential delays

- under Sections 8.3.2 or 8.3.2.1.
- 8.3.4 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

Article 9 Payments and Completion

ADD THE FOLLOWING PARAGRAH:

Contractor shall submit all payment applications, change orders, progress payments, and notices of substantial and final completion to the Owner.

Article 9.3 Applications for Payment:

CHANGE SENTENCE IN PARAGRAPH 9.3.1.1 as follows: Delete the words "or by interim determinations of the Architect, but not yet included in Change Orders."

ADD THE FOLLOWING PARAGRAPH:

9.3.1.3 The form of Application for Payment shall be on forms approved by the Owner and Architect.

ADD THE FOLLOWING to PARAGRAPH 9.3.2: Off site storage will not be approved except in extenuating circumstances. Approval of off site storage is at Owners sole discretion.

Article 9.7 Failure of Payment:

ADD SENTENCE TO PARAGRAPH 9.7: This paragraph shall not apply to payment for claims or other portions of the work in dispute.

Article 9.8 Substantial Completion:

ADD SENTENCE to PARAGRAPH 9.8.1 as follows: Substantial Completion is further defined as 1) obtaining a Certificate of Occupancy or Temporary Certificate of Occupancy from the building official,

2) fully secure building, and 3) remaining Work will not interfere with Owner's move-in operations.

ADD SENTENCE to PARAGRAPH 9.8.5 as follows: The payment shall be sufficient to increase the total payment to ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims.

Article 10.2 Safety of Persons and Property:

ADD THE FOLLOWING PARAGRAPH:

10.2.4.1 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner and adjacent property Owner's reasonable advance notice.

MODIFY PARAGRAPH 10.2.8 as follows: Replace "21 days" with "six (6) months."

Article 10.3 Hazardous Materials:

ADD THE FOLLOWING PARAGRAPH:

10.3.1.1 Reference to asbestos or polychlorinated biphenyl (PCB) in this Article does not negate the appropriate abatement of asbestos and PCB containing materials if specifically required by the Contract Documents.

Article 11.1: Contractor's Liability Insurance:

ADD THE FOLLOWING PARAGRAPHS:

11.1.1.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises operations (including C/U) as applicable;
2. Independent contractor's protective;
3. Products and completed operations;
4. Broad-form property damage including completed operations.

AMEND THE FOLLOWING PARAGRAPHS:

11.1.2 Revise the second sentence to read as follows: "Coverages shall be written on an occurrence basis and shall be maintained without interruption ..."

ADD THE FOLLOWING PARAGRAPHS:

11.1.2.1 The insurance required by subparagraph 11.1.1 shall be written for not less than the following, or as stated in paragraph 11.2.1:

1. Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal: (i.e., Longshoremen's): Statutory
2. Comprehensive General Liability (including premises-operations, independent contractors' protective, products and completed operations, broad form property damage):
 - a. Bodily Injury:
 - (1) Each Occurrence:
\$1,000,000
 - b. Property Damage:
 - (1) Each Occurrence:
\$1,000,000
 - c. Products and completed operations to be maintained for three (3) years after final payment.
 - d. Property damage liability insurance will provide C/U coverage per occurrence:

\$1,000,000
3. Contractual Liability:
 - a. Bodily Injury:
 - (1) Each Occurrence:
\$1,000,000
 - b. Property Damage:
 - (1) Each Occurrence:
\$1,000,000
4. Personal Injury with employment exclusion deleted:
 - a. Annual Aggregate:

\$1,000,000
5. Comprehensive Automobile Liability:
 - a. Bodily Injury:
 - (1) Each Person: \$1,000,000
 - (2) Each Occurrence: \$1,000,000

6. Property Damage:
a. Each Occurrence:

\$1,000,0

00

The Required General Liability Insurance shall name the Owner as an additional insured.

ADD THE FOLLOWING PARAGRAPH

11.1.5 Contractors shall indemnify and save and hold harmless the CITY its employees, officers and agents from all losses, claims, actions, judgments for damage, or injury to persons or property and losses and expenses caused or incurred by Contractor, its servants, agents, employees, guests, Subcontractors and business invitees, and not caused by or arising out of the tortious conduct of CITY or its employees. In addition, Contractor shall maintain, and specifically agrees it will maintain, throughout the term of this Agreement, liability insurance in which CITY shall be named insured in the minimum amount as specified in Section 11.1.2. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless.

If CITY becomes liable for an amount in excess of the insurance limits herein provided, Contractor covenants and agrees to indemnify and save and hold harmless the CITY from and for all such losses, claims, actions or judgments for damages for liability to persons or property.

Contractor shall provide CITY with a Certificate of Insurance or other proof of insurance evidencing Contractor's compliance with requirements of this paragraph and file such proof of insurance with PURCHASING DIVISION. In the event the insurance minimums of the Idaho Tort Claims Act are changed, Contractor shall immediately submit proof of compliance with the changed limits.

The insurance policy or certificate of insurance must be filed with Purchasing prior to commencing work under this Contract and no insurer shall cancel the Policy of Policies or Certificate of Insurance without first filing thirty (30) days notice thereof to Architect and City, but Contractor may, at any time, substitute a policy or policies or certificate of insurance of a qualified insurance company or companies of equal coverage for the policy or policies or certificate then on file with said Purchasing.

In case of the breach of any provision of this article, the CITY, at its option, may take out and maintain at the expense of the Contractor, such insurance as the CITY may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this contract.

Article 11.3 Property Insurance:

MODIFY PARAGRAPH 11.3.1 as follows: In the first sentence, change the word "Owner" to "Contractor."

DELETE PARARPAH 11.3.1.2 in its entirety.

MODIFY PARAGRAPH 11.3.1.3 as follows: In the first sentence, change the word "Owner" to "Contractor."

MODIFY PARAGRAPH 11.3.2 as follows: In the first sentence, change the word "Owner" to "Contractor."

DELETE PARAGRAPH 11.3.3 in its entirety.

AMEND PARAGRAPH 11.3.4 to read as follows: If the Owner requests in writing that insurance

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

AMEND PARAGRAPH 11.3.6 as follows: “..., the Contractor shall file with the Owner a copy of each policy...”

DELETE PARAGRAPH 11.3.9 in its entirety.

Article 11.4 Performance and Payment Bond

REPLACE PARAGRAPH 11.4.1 with the following: The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor’s usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond is established in the Agreement. The Contractor shall deliver said bonds not later than three days following the date the Agreement is entered into.

Article 12.1 Uncovering of Work

MODIFY PARAGRAPH 12.1.1 as follows: revise to read “... contrary to the Architect’s or Owner’s request...”

Article 12.2 Correction of Work

MODIFY PARAGRAPH 12.2.2.1 as follows: Add the following sentence immediately following the first sentence “Such correction shall be made by Contractor without cost to Owner.” Revise the second to last sentence to read as follows: “... the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty; however, such waiver only applies to the specific item(s) in which Owner fails to provide notice.”

MODIFY PARAGRAPH 12.2.2.3 as follows: Remove the word “not.”

Article 13.3 Written Notice

MODIFY PARAGRAPH 13.3 as follows: Delete the words “to a member of the firm or entity.”

Article 13.5 Tests and Inspections

AMEND PARAGRAPH 13.5.1 as follows: Revise to Read: Owner to provide special inspections per

International Building Code requirements.

AMMEND PARAGRAPH 13.5.2 as follows: Revise to read “... the Architect may, upon written authorization ...”

Article 14.2 Termination by the Owner for Cause

REPLACE PARAGRAPH 14.2.1.1 with the following: “repeatedly refuses or fails to supply enough properly skilled workers or proper materials, repeatedly fails to adhere to the project schedule, or fails to develop and implement plans to achieve completion by the Contract Time;”

REPLACE PARAGRAPH 14.2.1.3 with the following: “repeatedly disregards applicable laws, statutes, ordinances, codes, rule and regulations, lawful orders of a public authority, or repeatedly disregards in any substantial way provisions of the Contract Documents;”

MODIFY PARAGRAPH 14.2.2 as follows: Replace the word “certification” with “recommendation.”

ADD PARAGRAPH 14.2.5 as follows:

14.2.5 Should a Termination for Cause be determined by a court of competent jurisdiction to have been without basis, the termination shall become a Termination for Convenience and resolved in accordance with Section 14.4.

Article 15.1 Claims

REPLACE PARAGRAPH 15.1.2 with the following: “Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker, with a copy to the Architect if the Architect is not serving as the Initial Decision Maker. Initial notice of such claim, describing the general nature of the dispute or matter and the extent of the claim, along with other information available at the time, shall be given within ten (10) days after event or occurrence giving rise to such claim or after the claimant first recognizes the condition giving rise to the claim, whichever is later. Within thirty (30) days following such notice, to the extent then known to the claimant, the claimant must give full supporting data to the parties. For claims for increase in the Contract Time, supporting data shall include the analysis of the construction schedule. Claimant must provide additional information to the parties as it becomes known.”

ADD TO PARAGRAPH 15.1.4 the following: “Claims for additional cost shall comply with provisions in Section 7.5.”

Article 15.2 Initial Decision

ADD PARAGRAPH 15.2.1.1 as follows:

15.2.1.1 The Architect will serve as the Initial Decision Maker on this project.

REPLACE PARAGRAPH 15.2.2 as follows: “Within fourteen (14) days of receipt of complete claim information, provided under Section 15.1.2, other parties may provide written responses to the Initial Decision Maker. Within twenty one (21) days of receipt of this information, the Initial Decision Maker will review the information and take one of the following responses: (1) request additional supporting data or response from the claimant, or additional responses from the other parties; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise or meetings to resolve the Claim; or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim because of insufficient information to evaluate the merits to the Claim or because, in the sole opinion of the Initial Decision Maker, it would be inappropriate for the Initial Decision Maker to resolve the Claim. Initial decisions will include the reason for the decision.”

MODIFY PARAGRAPH 15.2.5 as follows: Replace the last sentence with the following: “The initial decision shall not be binding on any party, but will serve as the basis for negotiations to resolve the Claim. If the initial decision does not resolve the Claim, such decision will be admissible in court and in any further dispute resolution process.”

DELETE PARAGRAPHS 15.2.6 AND 15.2.6.1

Article 15.3 Mediation

DELETE ALL PARAGRAPHS IN 15.3 AND SUBSTITUTE THE FOLLOWING:

15.3.1 The Contractor and the Owner shall not be obligated to resolve any claim or dispute related to the contract by mediation. Any reference herein to mediation is deemed void and has no force or effect

Article 15.4 Arbitration

DELETE ALL PARAGRAPHS IN 15.4 AND SUBSTITUTE THE FOLLOWING:

15.4.1 The Contractor and the Owner shall not be obligated to resolve any claim or dispute related to the contract by arbitration. Any reference herein to arbitration is deemed void and has no force or effect.

Add Article 15.5 Dispute Resolution

ADD THE FOLLOWING PARAGRAPHS:

15.5.1 If any claim, dispute or other matters in controversy arise out of or related to the Contract, except those waived as provided for in Section 9.10.4, 9.10.5 and 15.1.6, the matter must first be referred to the Initial Decision Maker utilizing the process outlined in Section 15.2.

15.5.2 If the matter is not resolved in the process outlined in Section 15.2, either party may, by written notice, request that the matter be elevated to discussions with Senior Management. Within fifteen (15) days of such written notice, Senior Management will meet to discuss the matter. For the Owner, Senior Management is defined as the City Engineer. For the Contractor, Senior Management is defined as the Owner.

15.5.3 If the matter is not resolved by discussions with Senior Management, as outlined in Paragraph 15.5.2, the matter may be resolved in a Court of Law.

END OF SUPPLEMENTAL GENERAL CONDITION