



**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, OCTOBER 26, 2015**

**ITEM 7**

CIP PROJECT #400/NM CAP #14-L-2005 PARKS PLAYGROUND SHADE STRUCTURES INSTALLATION, RFB #16/06/B  
 a) REQUEST FOR APPROVAL OF AWARD OF CONSTRUCTION SERVICES SCOPE TO SARCON CONSTRUCTION, CORP. (SCC) TOGETHER WITH THE ASSOCIATED AIA AGREEMENT BETWEEN OWNER AND CONTRACTOR IN THE AMOUNT OF \$140,550 INCLUSIVE OF NMGRY (JASON KLUCK)

**PUBLIC WORKS COMMITTEE ACTION: Approved**

**FUNDING SOURCE: 32762.572970**

**SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:**

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR IVES	X		

# City of Santa Fe New Mexico

## Public Works Dept. - Facilities Division

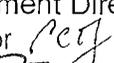
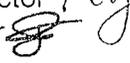
### MEMO

**DATE:** October 26, 2015

**TO:** Public Works, CIP & Land Use Committee/ Finance Committee/  
City Council

**VIA:** Oscar Rodriguez, Finance Department Director



Robert Carter, Parks & Recreation Department Director  
Richard Thompson, Parks Division Director   
David Pfeifer, Facilities Division Director 

**FROM:** Jason M. Kluck, Facilities Division Project Administrator JMK

**ISSUE:** City of Santa Fe CIP #400/NM CAP #14-L-2005 Parks Playground Shade Structures Installation, RFB #16/06/B:  
**Construction Services Agreement (Exhibit 1)**

- Request award of construction services scope to Sarcon Construction, Corp. (SCC) together with the associated AIA Agreement between Owner and Contractor (\$140,550.00 contract sum) inclusive of NMGRT.

#### SUMMARY:

Under the 51<sup>st</sup> NM Legislature, 2<sup>nd</sup> Session of 2014, House Bill 55, The House Taxation and Revenue Committee, Legislative Council Service has appropriated Severance Tax Bond funding in the amount of \$320,000.00 under Capital Outlay Projects "to design, construct, equip, shade structures in parks in Santa Fe in Santa Fe County".

A trial installation of two umbrella shades has been incorporated into the Colonia Prisma Park as a demonstration project under the same funding source indicated below. Public Works and Parks & Recreation Staff and the Parks and Recreation Commission concur that this installation is high quality, demonstrates the budget feasibility of the larger project scope and recommend city wide implementation of these shades in park playgrounds.

This memo is the request for approval of the installation agreement only. The request for approval of shade structure materials acquisition is presented in a separate packet.

On September 9, 2015, Purchasing Division accepted bids from qualified contractors to provide the required construction services for installation. The Bidders and base bids inclusive of NMGRT were as follows:

Sarcon Construction Corporation, Santa Fe - \$149,471.25

MEMO

City of Santa Fe CIP #400/NM CAP #14-L-2005 Parks Playground Shade Structures  
Installation, Construction Services Agreement

Page 2

Los Alamos Landscaping and More, LLC, Los Alamos - \$175,249.63

Davenport Construction Management LLC, Santa Fe - \$,228,047.64

ESA Construction, Inc, Albuquerque - \$445,098.30

The City issued a Notice of Intent to award this contract to SCC on September 21, 2015. Contract negotiations were finalized on October 25, 2015. The negotiated fee of \$140,550.00 is inclusive of NMGRS.

**BUDGET:**

Funding in the amount of \$140,550.00, inclusive of NMGRS is available in EXP Parks & Recreation – WIP Construction: Business Unit #32762.572970.

**SCHEDULE:**

Public Works Committee: 10/26/15

Finance Committee: 11/2/15

City Council: 11/10/15

See Exhibit B under Exhibit 1 for proposed construction schedule.

Construction start is pending approval of the separate procurement for shade materials and the associated manufacturing and delivery lead time.

**REQUESTED ACTION:**

Please approve the budget associated with this project and award of the construction services scope to SCC together with the associated AIA Agreement between Owner and Contractor and General Conditions in the amount of \$140,550.00.

**ATTACHMENTS:**

Construction Services Agreement with exhibits (Exhibit 1)

Contractor's Bid including Procurement Scope (Exhibit A under Exhibit 1)

Contractor's negotiated Price Proposal (Exhibit B under Exhibit 1)

Revised Bid Exhibits (Exhibit C under Exhibit 1)

Contractor's proposed construction schedule (Exhibit D under Exhibit 1)

Contractor's Certificate of Liability Insurance (Exhibit E under Exhibit 1)



## City of Santa Fe Summary of Contracts, Agreements, & Amendments

**Section to be completed by department for each contract or contract amendment**

- |   |                          |                                     |                             |                          |
|---|--------------------------|-------------------------------------|-----------------------------|--------------------------|
| 1 | FOR: ORIGINAL CONTRACT   | <input checked="" type="checkbox"/> | CONTRACT AGREEMENT          | <input type="checkbox"/> |
|   | MAINTENANCE AGREEMENT    | <input type="checkbox"/>            | LICENSE AGREEMENT           | <input type="checkbox"/> |
|   | LEGAL SERVICES AGREEMENT | <input type="checkbox"/>            | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
|   | MEMORANDUM OF AGREEMENT  | <input type="checkbox"/>            | JOINT POWERS AGREEMENTS     | <input type="checkbox"/> |
|   | GRANT AGREEMENTS         | <input type="checkbox"/>            | CHANGE ORDERS               | <input type="checkbox"/> |

2 Name of Contractor Sarcon Construction Corporation

- 3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$140,550.00

Termination Date: June 30, 2019

Approved by Council Date: (pending)

or by City Manager Date: \_\_\_\_\_

Contract is for: City of Santa Fe CIP #400/NM CAP 14-L-2005 Santa Fe Parks Playground Shade Structures Installation

Amendment # N/A to the Original Contract# \_\_\_\_\_

Increase/(Decrease) Amount \$ \_\_\_\_\_

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: \_\_\_\_\_

or by City Manager Date: \_\_\_\_\_

Amendment is for:

- 4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments)  Plus GRT  
 Inclusive of GRT

Amount \$ N/A of original Contract# \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ \_\_\_\_\_



**City of Santa Fe  
Summary of Contracts, Agreements, & Amendments**

5 Procurement Method of Original Contract: (complete one of the lines)

RFP  RFQ  Sole Source  Other

6 Procurement History: New contract - RFB 16/06/B  
example: (First year of 4 year contract)

7 Funding Source: Exp Parks & Recreation - WIP Constructi BU/Line Item: 32762.57297

8 Any out-of-the ordinary or unusual issues or concerns:  
N/A  
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Jason M. Kluck Phone # 955-5937

Division Contract Administrator: Richard Thompson

Division Director: Richard Thompson

Department Director: Robert Carter

10 Certificate of Insurance attached. (if original Contract)

11 Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity: Public Bid

12 Prior year's contract amount?: N/A

13 Describe service impact from an ongoing commitment to the contractor: N/A

14 Why staff cannot perform the work?: Licensed Contractor with labor force and support Staff required

15 If extending contract, why?: N/A

16 Was a Santa Fe company awarded contract? If not, why?: Yes

17 Has the contract has been approved as to form by City Attorney's Office?: yes

18 Is this for City Manager or Council approval?: City Council

To be recorded by City Clerk:

Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

## CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Sarcon Construction Corporation

Procurement Title: CIP #400 / NM CAP 14-L-2005 – City of Santa Fe Parks Playground Shade Structures Materials

Solicitation RFP/RFB#: 16/06/B

Other Methods: State Price Agreement  *Cooperative*  *Sole Source*  *Exempt*  *Other*

Department Requesting/Staff Member Public Works/Facilities/Jason Kluck

**Procurement Requirements:**

*A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the procurement officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .*

**SOLICITATION\***

- | YES                                 | N/A                                 |  |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Project Beginning History (council requests etc)                             |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Budget Determination (FIR) attach  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Solicitation document (RFP, IFB),  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Screen print of legal solicitation published in newspapers, web sites, etc.: |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Screen print of addendum(s) published on the IPB/RFP:                        |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Pre-Bid/Pre-Offer Conference attendance sheet and other documents            |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | If canceled, screen print of cancellation of solicitation notice             |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Other: _____   |

**EVALUATION\***

- | YES                                 | N/A                                 |   |
|-------------------------------------|-------------------------------------|---|
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Blank evaluation form   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Evaluator's names and profiles  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Evaluation procedures or evaluation instructions  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Conflict/Confidentiality Forms signed by all Evaluators, Technical Advisors, Reviewers, and any person who assists in regard to the bid/proposal, evaluation and/or award |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Bid or Offer opening sheet(s) (If RFP, then two offer opening sheets, one for technical and one for cost)   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Screen print of Bidder/Offeror's detailed information   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Responsiveness review sheet or other sheet documenting responsiveness for each Bidder/Offeror, attach requests for additional information to cure items                   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Non-Responsive/Non-Responsibility Form and correspondence or letters from Department to vendor regarding disqualifications  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Oral presentations (sign-in sheets, presentation materials, etc.)   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Documentation sent to Bidders/Offerors and responses received regarding clarifications, decisions, negotiations, and/or best and final offers, etc.                       |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Reference Reviews/Reference Check Questionnaires  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Individual evaluations included for each RFP.   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Pricing evaluation  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Final overall evaluation matrix or summary of evaluator scores  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Other: _____  |

\*

**AWARD\***

YES    N/A

- Fully executed Memo to Committees from the Department with recommendation of award
- Winning proposal (this is a copy that has all confidential/proprietary information excluded)
- Screen print of Contract Award Notice
- Screen print of Award Notice published on agency website
- Email or notification sent to all Bidders/Offerors that award was made
- Waiver or "No Action Taken" from Procurement Office
- Correspondence with Procurement Office regarding waiver
- If IFB and not awarded to lowest responsive, responsible bidder; written explanation
- Other: \_\_\_\_\_

**DISCLOSURES**

YES    N/A

- Contractor Disclosures & Conflicts of Interest**
- Disclosures & Conflicts of Interest Form(s) (winning bidder(s)/offeror(s))
- Contractor –Conflicts of Interest**
- Purchasing Office Letter or e-mail to designated individual regarding potential conflict
- Conflict of Interest Form signed by all parties
- Letter from Procurement Office regarding the potential conflict
- Subcontractor Disclosures**
- Disclosures & Conflicts of Interest form of Subcontractor(s)
- Subcontractor –Conflicts of Interest**
- Purchasing Officer Letter or email to designated individual regarding potential conflict
- Conflict of Interest form signed by all parties
- Letter from Legal Office regarding the potential conflict
- Other: \_\_\_\_\_

**CONTRACT**

YES    N/A

- Copy of Executed Contract
- Copy of all documentation presented to the Committees
- Finalized Council Committee Minutes
- Other: \_\_\_\_\_

**MISCELLANEOUS FILE\***

YES    N/A

- Local Preference Form
- New Mexico Residence Form
- Veterans Exemption
- Sole Source determination form approved by Procurement Officer**
- Exempt determination memo approved by Procurement Officer**
- Other: \_\_\_\_\_

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

**PROTEST (if applicable)\***

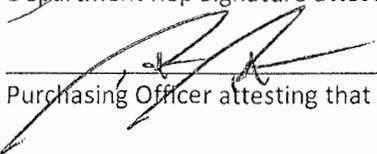
- | YES                      | N/A                                 |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Documentation from protester filed with the Purchasing Office               |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Department to Purchasing Office Providing response to protest   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Purchasing Officer to protester and Department on final outcome |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____  |

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

- | YES                                 | N/A                                 |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Original bid(s) or proposal(s) with no redactions.  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Documentation exempt - Proprietary, Confidential, Competitively Sensitive, or Trade Secret (i.e. e-mails, proposals, letters) |

Jason M. Kluck Public Works Project Administrator  
Department Rep Printed Name and Title

  
Department Rep Signature attesting that all information included

 10/6/15  
Purchasing Officer attesting that all information is reviewed



# Document A101™ – 2007

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year 2015

BETWEEN the Owner:

City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, New Mexico 87501  
(505)955-5937

and the Contractor:

Sarcon Construction Corporation  
PO Box 6020  
Santa Fe, NM 87502(505)474-4700  
for the following Project:

City of Santa Fe CIP #400  
New Mexico State CAP #14-L-2005  
Santa Fe Parks Playground Shade Structures Installation & Related Work  
Installation of (95) umbrella shade structures at (30) park playgrounds

The Owner's Representative:

City of Santa Fe Public Works Staff as designated by the City  
2651 Siringo Road, Building E  
Santa Fe, NM 87505

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

init.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work

*(Paragraphs deleted)*

will be the date on the Notice to Proceed issued by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred eighty three ( 183 ) days from the date of

*(Paragraphs deleted)*

commencement subject to adjustments of this Contract Time as provided by the Contract Documents.

*(Paragraphs deleted)*

Liquidated damages of two hundred fifty dollars (\$250.00) per calendar day will apply for work not completed by the Substantial completion date.

Init.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion Date

subject to adjustments of this Contract Time as provided in the Contract Documents.  
 (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated damages of two hundred fifty dollars (\$250.00) per calendar day will apply for work not completed by the Substantial completion date.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~one hundred forty thousand five hundred fifty dollars and zero cents~~ (\$140,550.00), inclusive of New Mexico Gross Receipts tax and subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
Project Contingency	\$3,000.00

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect/Owner's Representative by the Contractor and authorization for payment/Certificates for Payment issued by the Architect/Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect/Owner's Representative not later than the ~~1st~~ 21st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~1st~~ 21st day of the ~~1st~~ 1st month. If an Application for Payment is received by the Architect/Owner's Representative

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- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

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

§ 5.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 final authorization for payment has been issued by the Owner’s Representative.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 21 days after the issuance of the Owner’s Representative’s final authorization for payment, or as follows:

Within fifteen days of the Contractor’s request for final payment being submitted by the Contractor to the City, provided the Owner has received the Consent of Surety, Waivers, Releases of Liens, Final Certified Payroll, applicable State, Manufacturer and Vendor inspections, Certificate of Occupancy, CID Permit Summary, As-Built documents, all applicable Warranties, Operations & Maintenance manuals, completed final Punch List, walk through(s) and trainings.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The City will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.  
*(Paragraphs deleted)*

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- In accordance with New Mexico Public Works Mediation Act 13-4C-1 through 13-4C-11, NMSA 1978.*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007. This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor. The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement. If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed and accepted by the City through the date Contractor receives notice of such termination, and for which compensation has not already been paid and prior approved reimbursable expenses incurred through the date Contractor receives notice of such termination.

Init.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

Jason M. Kluck or other authorized Public Works Project Administrator or Director  
Project Administrator  
Facilities Division, Public Works Department  
City of Santa Fe  
2651 Siringo Road, Building E, Santa Fe, New Mexico 87505  
(505) 955-5937

§ 8.3 The Contractor's representative:

Peter Brill President Sarcon Construction Corporation PO Box 6020 Santa Fe, NM 87502 (505) 474-4700

§ 8.4

*(Paragraphs deleted)*

Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.5 Other provisions:

##### § 8.5.1 INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgements, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

*(Paragraphs deleted)*

##### § 8.5.2 APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

##### § 8.5.3 THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

##### § 8.5.4 STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

Init.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

#### **§ 8.5.5 CONFLICT OF INTEREST**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

#### **§ 8.5.6 ASSIGNMENT: SUBCONTRACTING**

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

#### **§ 8.5.7 RELEASE**

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### **§ 8.5.8 INSURANCE**

A. The contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

#### **§ 8.5.9 RECORDS AND AUDIT**

The contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not

foreclose the right of the City to recover excessive or illegal payments.

**§ 8.5.10 APPLICABLE LAW: CHOICE OF LAW: VENUE**

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**§ 8.5.11 AMENDMENT**

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

**§ 8.5.12 NON-DISCRIMINATION**

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

**§ 8.5.13 SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

**§ 8.5.14 NOTICES**

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five (5) days after the same are deposited in the United States Postal Service mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the address indicated below for each party, or at such other address as may be designated by either party in a written notice to the other party:

OWNER:	City of Santa Fe Public Works Department, Facilities Division PO Box 909 Santa Fe, NM 87504-0909
CONTRACTOR:	Sarcon Construction Corporation PO Box 6020 Santa Fe, NM 87502

**§ 8.5.15 NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this agreement is subject to the

Init.

immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**§ 8.5.16 TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and terminate on June 30, 2019, unless sooner pursuant to section 8.5.11, infra.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 9.1.1** The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

**§ 9.1.2** The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 9.1.3** The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Request For Bid '16/06/B	RFB/Project Manual	08/12/2015	See Project Manual Index

**§ 9.1.4** The Specifications:

The specifications are included in the Request for Bid '16/06/B Project Manual

**§ 9.1.5** The Drawings:

Park Site drawings: included in the Request for Bid '16/06/B Project Manual, Structural drawings and installation instructions provided by the shade structure manufacturer

**§ 9.1.6** The Addenda, if any:

Number	Date	Pages
None		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

**§ 9.1.7** Additional documents forming part of the Contract Documents .1 AIA Document A201, General Conditions of the Contract for Construction attached as part of this agreement (Exhibit 1).. .2 Contractor's Bid including Procurement Scope (Exhibit A under Exhibit 1).

.3 Contractor's negotiated Price Proposal (Exhibit B under Exhibit 1).

.4 Revised Bid Packet Exhibits (Exhibit C under Exhibit 1).

.5 Contractor's Proposed Construction Schedule (Exhibit D under Exhibit 1).

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.6 Contractor's Certificate of Liability Insurance (Exhibit E under Exhibit 1).

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(Paragraph deleted)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Performance Payment Bonds	100% of the Contract amount
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 general aggregate
Automobile Liability	\$500,000 combined single limit
Workers Compensation	\$100,000 each accident, \$100,000 disease, each employee
Workers	\$500,000 disease, policy limit

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

\_\_\_\_\_  
JAVIER GONZALES, MAYOR

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

 10/13/15  
\_\_\_\_\_  
KELLEY A. BRENNAN,  
CITY ATTORNEY

CONTRACTOR:  
SARCON CONSTRUCTION CORPORATION

  
\_\_\_\_\_  
BY: PETER BRILL

NM LICENSE #:55590  
CRS #:02-284743-00-0  
CITY BUSINESS REGISTRATION #:15-00097917  
\_\_\_\_\_

APPROVED:

\_\_\_\_\_  
OSCAR RODRIGUEZ, FINANCE DIRECTOR

32762.572970  
Business Unit/Line Item

*(Paragraphs deleted)*

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**AIA**<sup>®</sup>

# Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### FOR REQUEST FOR BID (RFB) PURPOSES ONLY

**for the following PROJECT:**

City of Santa Fe CIP #400  
NMCAP\_14L2005\_Santa Fe Parks Playground Shade Structures Installation and Related Work

**THE OWNER:**

City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, New Mexico, 87501 (505)955-5937

**THE CONTRACTOR:**

Sarcon Construction Corporation  
PO Box 6020  
Santa Fe, NM 87502  
(505)474-4700

**THE OWNER'S REPRESENTATIVE:**

City of Santa Fe Public Works Staff as designated by the City  
2651 Siringo Road, Building E  
Santa Fe, NM 87505

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 OWNER'S REPRESENTATIVE
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

## INDEX

(Topics and numbers in bold are section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.4.2, 13.7, 14.1, 15.2

### Addenda

1.1.1, 3.11

### Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

### Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

**3.8**, 7.3.8

### All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,  
11.1.3

### Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,  
4.2.7, 9.3.2, 13.5.1

### Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

## OWNER'S REPRESENTATIVE

**4**

### Owner's Representative, Definition of

**4.1.1**

### Owner's Representative, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

### Owner's Representative, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,  
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,  
9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

### Owner's Representative's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

### Owner's Representative's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

### Owner's Representative's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

### Owner's Representative's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Owner's Representative's Copyright

1.1.7, 1.5

### Owner's Representative's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.5.2, 15.2, 15.3

### Owner's Representative's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

### Owner's Representative's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

### Owner's Representative's Interpretations

4.2.11, 4.2.12

### Owner's Representative's Project Representative

4.2.10

### Owner's Representative's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,  
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,  
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,  
15.2

### Owner's Representative's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

### Owner's Representative's Representations

9.4.2, 9.5.1, 9.10.1

### Owner's Representative's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

### Bidding Requirements

1.1.1, 5.2.1, 11.4.1

### Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,  
15.3.2, 15.4.1

### Boiler and Machinery Insurance

**11.3.2**

Init.

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(1920346989)

Bonds, Lien  
7.3.7.4, 9.10.2, 9.10.3

**Bonds, Performance, and Payment**  
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4

Building Permit  
3.7.1

Capitalization  
1.3

Certificate of Substantial Completion  
9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**  
4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance  
9.10.2, 11.1.3

**Change Orders**  
1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

**Change Orders, Definition of**  
7.2.1

**CHANGES IN THE WORK**  
2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of  
15.1.1

**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**  
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

**Claims for Additional Time**  
3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5

**Concealed or Unknown Conditions, Claims for**  
3.7.4

Claims for Damages  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration  
15.3.1, 15.4.1

**Cleaning Up**  
3.15, 6.3

Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

**Commencement of the Work, Definition of**  
8.1.2

**Communications Facilitating Contract Administration**  
3.9.1, 4.2.4

Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**  
9

Completion, Substantial  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws  
1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4

Consent, Written  
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**  
15.4.4

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**  
1.1.4, 6

**Construction Change Directive, Definition of**  
7.3.1

**Construction Change Directives**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**  
5.4, 14.2.2.2

**Continuing Contract Performance**  
15.1.3

**Contract, Definition of**  
1.1.2

**CONTRACT, TERMINATION OR SUSPENSION OF THE**  
5.4.1.1, 11.3.9, 14

Contract Administration  
3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to  
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**  
1.1.1

**Contract Sum**  
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum, Definition of**  
9.1

init.

Contract Time  
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

**Contract Time**, Definition of  
8.1.1

**CONTRACTOR**  
3

**Contractor**, Definition of  
3.1, 6.1.2

**Contractor's Construction Schedules**  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contractor's Employees**  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

**Contractor's Liability Insurance**  
11.1

**Contractor's Relationship with Separate Contractors and Owner's Forces**  
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

**Contractor's Relationship with Subcontractors**  
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

**Contractor's Relationship with the Owner's Representative**  
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

**Contractor's Representations**  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

**Contractor's Responsibility for Those Performing the Work**  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

**Contractor's Review of Contract Documents**  
3.2

**Contractor's Right to Stop the Work**  
9.7

**Contractor's Right to Terminate the Contract**  
14.1, 15.1.6

**Contractor's Submittals**  
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

**Contractor's Superintendent**  
3.9, 10.2.6

**Contractor's Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

**Contractual Liability Insurance**  
11.1.1.8, 11.2

**Coordination and Correlation**  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

**Copies Furnished of Drawings and Specifications**  
1.5, 2.2.5, 3.11

**Copyrights**  
1.5, 3.17

**Correction of Work**  
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

**Correlation and Intent of the Contract Documents**  
1.2

**Cost**, Definition of  
7.3.7

**Costs**  
2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

**Cutting and Patching**  
3.14, 6.2.5

**Damage to Construction of Owner or Separate Contractors**  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

**Damage to the Work**  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

**Damages, Claims for**  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

**Damages for Delay**  
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

**Date of Commencement of the Work**, Definition of  
8.1.2

**Date of Substantial Completion**, Definition of  
8.1.3

**Day**, Definition of  
8.1.4

**Decisions of the Owner's Representative**  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, 9.5, 9.7, 14.1.1.3

**Defective or Nonconforming Work, Acceptance, Rejection and Correction of**  
2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Definitions**  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

**Delays and Extensions of Time**  
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

**Disputes**  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
3.11

**Drawings**, Definition of  
1.1.5

**Drawings and Specifications, Use and Ownership of**  
3.11

**Effective Date of Insurance**  
8.2.2, 11.1.2

**Emergencies**  
10.4, 14.1.1.2, 15.1.4

Init.

Employees, Contractor's  
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1  
 Equipment, Labor, Materials or  
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
 Execution and Progress of the Work  
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,  
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
 Extensions of Time  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
 10.4, 14.3, 15.1.5, 15.2.5  
**Failure of Payment**  
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Faulty Work  
 (See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
 12.3, 14.2.4, 14.4.3  
 Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4  
 Fire and Extended Coverage Insurance  
 11.3.1.1  
**GENERAL PROVISIONS**  
**I**  
**Governing Law**  
**13.1**  
 Guarantees (See Warranty)  
**Hazardous Materials**  
 10.2.4, 10.3  
 Identification of Subcontractors and Suppliers  
 5.2.1  
**Indemnification**  
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
 11.3.7  
**Information and Services Required of the Owner**  
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3  
**Initial Decision**  
**15.2**  
**Initial Decision Maker, Definition of**  
 1.1.8  
 Initial Decision Maker, Decisions  
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Initial Decision Maker, Extent of Authority  
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
 15.2.5  
**Injury or Damage to Person or Property**  
**10.2.8, 10.4**  
 Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 12.2.1, 13.5  
 Instructions to Bidders  
 1.1.1

Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2  
**Instruments of Service, Definition of**  
**1.1.7**  
 Insurance  
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11  
**Insurance, Boiler and Machinery**  
**11.3.2**  
**Insurance, Contractor's Liability**  
**11.1**  
 Insurance, Effective Date of  
 8.2.2, 11.1.2  
**Insurance, Loss of Use**  
**11.3.3**  
**Insurance, Owner's Liability**  
**11.2**  
**Insurance, Property**  
 10.2.5, 11.3  
 Insurance, Stored Materials  
 9.3.2  
**INSURANCE AND BONDS**  
**11**  
 Insurance Companies, Consent to Partial Occupancy  
 9.9.1  
 Intent of the Contract Documents  
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4  
**Interest**  
**13.6**  
**Interpretation**  
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1  
 Interpretations, Written  
 4.2.11, 4.2.12, 15.1.4  
 Judgment on Final Award  
 15.4.2  
**Labor and Materials, Equipment**  
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
 Labor Disputes  
 8.3.1  
 Laws and Regulations  
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,  
 14, 15.2.8, 15.4  
 Liens  
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8  
 Limitations, Statutes of  
 12.2.5, 13.7, 15.4.1.1  
 Limitations of Liability  
 2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,  
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,  
 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2  
 Limitations of Time  
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,  
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Init.

**Loss of Use Insurance**  
**11.3.3**  
 Material Suppliers  
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5  
**Materials, Hazardous**  
 10.2.4, **10.3**  
 Materials, Labor, Equipment and  
 1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,  
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2  
 Means, Methods, Techniques, Sequences and  
 Procedures of Construction  
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2  
 Mechanic's Lien  
 2.1.2, 15.2.8  
**Mediation**  
 8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,  
 15.4.1  
**Minor Changes in the Work**  
 1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**  
**MISCELLANEOUS PROVISIONS**  
**13**  
**Modifications, Definition of**  
**1.1.1**  
 Modifications to the Contract  
 1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
 10.3.2, 11.3.1  
**Mutual Responsibility**  
**6.2**  
**Nonconforming Work, Acceptance of**  
 9.6.6, 9.9.3, **12.3**  
 Nonconforming Work, Rejection and Correction of  
 2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
 12.2.1  
 Notice  
 2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,  
 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,  
 14.1, 14.2, 15.2.8, 15.4.1  
**Notice, Written**  
 2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10,  
 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8,  
 15.4.1  
**Notice of Claims**  
 3.7.4, 10.2.8, **15.1.2**, 15.4  
 Notice of Testing and Inspections  
 13.5.1, 13.5.2  
 Observations, Contractor's  
 3.2, 3.7.4  
 Occupancy  
 2.2.2, 9.6.6, 9.8, 11.3.1.5  
 Orders, Written  
 1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1,  
 13.5.2, 14.3.1  
**OWNER**  
**2**  
**Owner, Definition of**  
**2.1.1**

**Owner, Information and Services Required of the**  
 2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,  
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3  
 Owner's Authority  
 1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,  
 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1,  
 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3,  
 13.2.2, 14.3, 14.4, 15.2.7  
 Owner's Financial Capability  
 2.2.1, 13.2.2, 14.1.1.4  
**Owner's Liability Insurance**  
**11.2**  
 Owner's Relationship with Subcontractors  
 1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2  
**Owner's Right to Carry Out the Work**  
 2.4, 14.2.2  
**Owner's Right to Clean Up**  
**6.3**  
**Owner's Right to Perform Construction and to**  
**Award Separate Contracts**  
**6.1**  
**Owner's Right to Stop the Work**  
**2.3**  
 Owner's Right to Suspend the Work  
 14.3  
 Owner's Right to Terminate the Contract  
 14.2  
**Ownership and Use of Drawings, Specifications**  
**and Other Instruments of Service**  
 1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12,  
 5.3  
**Partial Occupancy or Use**  
 9.6.6, 9.9, 11.3.1.5  
**Patching, Cutting and**  
**3.14, 6.2.5**  
 Patents  
 3.17  
**Payment, Applications for**  
 4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
 14.2.3, 14.2.4, 14.4.3  
**Payment, Certificates for**  
 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
 9.10.3, 13.7, 14.1.1.3, 14.2.4  
**Payment, Failure of**  
 9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2  
 Payment, Final  
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3,  
 13.7, 14.2.4, 14.4.3  
**Payment Bond, Performance Bond and**  
**7.3.7.4, 9.6.7, 9.10.3, 11.4**  
**Payments, Progress**  
 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3  
**PAYMENTS AND COMPLETION**  
**9**

init.

Payments to Subcontractors  
 5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2  
 PCB  
 10.3.1  
**Performance Bond and Payment Bond**  
 7.3.7.4, 9.6.7, 9.10.3, 11.4  
**Permits, Fees, Notices and Compliance with Laws**  
 2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2  
**PERSONS AND PROPERTY, PROTECTION OF**  
**10**  
 Polychlorinated Biphenyl  
 10.3.1  
**Product Data, Definition of**  
**3.12.2**  
**Product Data and Samples, Shop Drawings**  
 3.11, 3.12, 4.2.7  
**Progress and Completion**  
 4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3  
**Progress Payments**  
 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3  
**Project, Definition of**  
**1.1.4**  
 Project Representatives  
 4.2.10  
**Property Insurance**  
 10.2.5, 11.3  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
 Regulations and Laws  
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
 15.2.8, 15.4  
 Rejection of Work  
 3.5, 4.2.6, 12.2.1  
 Releases and Waivers of Liens  
 9.10.2  
 Representations  
 3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1,  
 9.8.2, 9.10.1  
 Representatives  
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,  
 5.1.2, 13.2.1  
 Responsibility for Those Performing the Work  
 3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
 Retainage  
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2, 3.12.7, 6.1.3**  
 Review of Contractor's Submittals by Owner and  
 Owner's Representative  
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
 Review of Shop Drawings, Product Data and  
 Samples by Contractor  
 3.12

**Rights and Remedies**  
 1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,  
**13.4, 14, 15.4**  
**Royalties, Patents and Copyrights**  
**3.17**  
 Rules and Notices for Arbitration  
 15.4.1  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11, 3.12, 4.2.7**  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2, 9.3.1**  
 Schedules, Construction  
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2  
 Separate Contracts and Contractors  
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
 3.11, 3.12, 4.2.7  
**Site, Use of**  
**3.13, 6.1.1, 6.2.1**  
 Site Inspections  
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5  
 Site Visits, Owner's Representative's  
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5  
 Special Inspections and Testing  
 4.2.6, 12.2.1, 13.5  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14  
 Statute of Limitations  
 13.7, 15.4.1.1  
 Stopping the Work  
 2.3, 9.7, 10.3, 14.1  
 Stored Materials  
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
 Subcontractors, Work by  
 1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
 9.6.7  
**Subcontractual Relations**  
**5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1**

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3  
Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
Subrogation, Waivers of  
6.1.1, 11.3.7  
Substantial Completion  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7  
Substantial Completion, Definition of  
9.8.1  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Owner's Representative  
4.1.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
Sub-subcontractor, Definition of  
5.1.2  
Subsurface Conditions  
3.7.4  
Successors and Assigns  
13.2  
Superintendent  
3.9, 10.2.6  
Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3  
Surety  
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7  
Surety, Consent of  
9.10.2, 9.10.3  
Surveys  
2.2.3  
Suspension by the Owner for Convenience  
14.3  
Suspension of the Work  
5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14  
Taxes  
3.6, 3.8.2.1, 7.3.7.4  
Termination by the Contractor  
14.1, 15.1.6  
Termination by the Owner for Cause  
5.4.1.1, 14.2, 15.1.6  
Termination by the Owner for Convenience  
14.4  
Termination of the Owner's Representative  
4.1.3  
Termination of the Contractor  
14.2.2  
**TERMINATION OR SUSPENSION OF THE CONTRACT**  
14

**Tests and Inspections**  
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, 13.5  
**TIME**  
8  
**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5  
Time Limits  
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4  
**Time Limits on Claims**  
3.7.4, 10.2.8, 13.7, 15.1.2  
Title to Work  
9.3.2, 9.3.3  
**Transmission of Data in Digital Form**  
1.6  
**UNCOVERING AND CORRECTION OF WORK**  
12  
**Uncovering of Work**  
12.1  
Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3  
Unit Prices  
7.3.3.2, 7.3.4  
Use of Documents  
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3  
**Use of Site**  
3.13, 6.1.1, 6.2.1  
**Values, Schedule of**  
9.2, 9.3.1  
Waiver of Claims by the Owner's Representative  
13.4.2  
Waiver of Claims by the Contractor  
9.10.5, 13.4.2, 15.1.6  
Waiver of Claims by the Owner  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6  
Waiver of Consequential Damages  
14.2.4, 15.1.6  
Waiver of Liens  
9.10.2, 9.10.4  
**Waivers of Subrogation**  
6.1.1, 11.3.7  
**Warranty**  
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7  
Weather Delays  
15.1.5.2  
**Work, Definition of**  
1.1.3  
Written Consent  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2  
Written Interpretations  
4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,  
9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14,  
15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,  
15.1.2

Init.

## 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 Owner's Representative. 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 Owner's Representative or the Owner's Representative's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Owner's Representative or the Owner's Representative's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Owner's Representative shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Owner's Representative'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 or provided by the Owner's Representative. 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 Owner shall be deemed the author and owner of the Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights, or other rights or exclusion of rights as indicated in the agreement between Owner and Architect, as applicable. 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 Owner's 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. 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, Owner's Representative and the Owner's Representative'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 Owner's Representative 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

Init.

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 Owner's Representative'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 Owner's Representative. 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 Owner's Representative in the Owner's Representative's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

Init.

### § 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 Owner's Representative any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner's Representative 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 Owner's Representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner's Representative may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner's Representative 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 Owner's Representative 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 Owner's Representative and shall not proceed with that portion of the Work without further written instructions from the Owner's Representative. 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

init.

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 Owner's Representative 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 Owner's Representative 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 Owner's Representative 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 Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay all obligatory 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 any required building permit(s) 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 Owner's Representative before conditions are disturbed and in no event later than 3 days after first observance of the conditions. The Owner's Representative will promptly investigate such conditions and, if the Owner's Representative 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 Owner's Representative 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 Owner's Representative shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Owner's Representative's determination or recommendation, that party may proceed as provided in Article 15.

Init.

§ 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 Owner's Representative. 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 Owner's Representative the name and qualifications of a proposed superintendent. The Owner's Representative may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Owner's Representative has reasonable objection to the proposed superintendent or (2) that the Owner's Representative requires additional time to review. Failure of the Owner's Representative 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 Owner's Representative 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 Owner's Representative'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 Owner's Representative's approval. The Owner's Representative'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 Owner's Representative 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 Owner's Representative.

#### § 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 Owner's Representative and shall be delivered to the Owner's Representative 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 Owner's Representative is subject to the limitations of Section 4.2.7. Informational submittals upon which the Owner's Representative 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 Owner's Representative without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owner's Representative Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Owner's Representative 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 Owner's Representative 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 Owner's Representative.

§ 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 Owner's Representative's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner's Representative in writing of such deviation at the time of submittal and (1) the Owner's Representative 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 Owner's Representative's approval thereof.

Init.

§ 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 Owner's Representative on previous submittals. In the absence of such written notice, the Owner's Representative'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 Owner's Representative 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 Owner's Representative. The Owner and the Owner's Representative 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 Owner's Representative have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner's Representative 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 Owner's Representative access to the Work in preparation and progress wherever located.

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### § 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 Owner's Representative 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 Owner's Representative. 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 Owner's Representative.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner's Representative, Owner's Representative'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 OWNER'S REPRESENTATIVE

### § 4.1 GENERAL

*(Paragraphs deleted)*

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Owner's Representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's agent during construction until the date the Owner's Representative issues the final authorization for payment.

§ 4.2.2 The Owner's Representative 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 Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative 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 Owner's Representative 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 Owner's Representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's

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Representative 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 Owner's Representative about matters arising out of or relating to the Contract. 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 Owner's Representative's evaluations of the Contractor's Applications for Payment, the Owner's Representative will review and certify the amounts due the Contractor and will sign the Application for Payment.

§ 4.2.6 The Owner's Representative has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner's Representative considers it necessary or advisable, the Owner's Representative 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 Owner's Representative 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 Owner's Representative 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 Owner's Representative 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 Owner's Representative's action will be taken in accordance with the submittal schedule approved by the Owner's Representative or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's Representative'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 Owner's Representative'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 Owner's Representative's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner's Representative, of any construction means, methods, techniques, sequences or procedures. The Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Owner's Representative 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 sign the final Application for Payment pursuant to Section 9.10.

*(Paragraph deleted)*

§ 4.2.11 The Owner's Representative will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's Representative'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 Owner's Representative 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 Owner's Representative 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 Owner's Representative'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 Owner's Representative will review and respond to requests for information about the Contract Documents. The Owner's Representative's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Owner's Representative 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 Owner's Representative 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 Owner's Representative may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Owner's Representative has reasonable objection to any such proposed person or entity or (2) that the Owner's Representative requires additional time for review. Failure of the Owner or Owner's Representative 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 Owner's Representative 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 Owner's Representative has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Owner's Representative 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 Owner's Representative 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 Owner's Representative. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner's Representative 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

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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 Owner's Representative 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 Owner's Representative 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, 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 Owner's Representative; an order for a minor change in the Work may be issued by the Owner's Representative 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 Owner's Representative and signed by the Owner, Contractor and Owner's Representative 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.

§ 7.2.2 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 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.

§ 7.2.3 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner's Representative 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 Owner's Representative 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, 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.

§ 7.2.4 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 Owner's Representative. When both additions and credits covering related Work or substitutions are involved in a change, the percentages for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.2.5 When the Owner and Contractor agree with a determination made by the Owner's Representative concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately after the issuance of a Change Order.

#### § 7.3 MINOR CHANGES IN THE WORK

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

*(Paragraphs deleted)*

### 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 Owner's Representative 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 Owner's Representative, 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 Owner's Representative determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner's Representative 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 Owner's Representative, 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 Owner's Representative may require. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five days before the date established for each progress payment, the Contractor shall submit to the Owner's Representative 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 Owner's Representative 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 Owner's Representative, 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 Owner's Representative will, within three days after receipt of the Contractor's Application for Payment, either sign the Application for payment, with a copy to the Contractor for such amount as the Owner's

Representative determines is properly due, or notify the Contractor and Owner in writing of the Owner's Representative's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 Signing the Application for Payment will constitute a representation by the Owner's Representative to the Owner, based on the Owner's Representative's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Owner's Representative'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 Owner's Representative. Signing the Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, signing the Application for Payment will not be a representation that the Owner's Representative 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 Owner's Representative may withhold approval of the Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Representative's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner's Representative is unable to approve payment in the amount of the Application, the Owner's Representative will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue an authorization for payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative may also withhold signing an Application for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the Owner's Representative'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 approval are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner's Representative withholds approving a 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 Owner's Representative.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Owner's Representative has signed the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Owner's Representative.

§ 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

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agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner's Representative 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 Owner's Representative 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 Owner's Representative 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 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 Owner's Representative does not sign an Application 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 the timeframe established in the Contract Documents the amount certified by the Owner's Representative or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Owner's Representative, 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 Owner's Representative 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 Owner's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Representative'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 Owner's Representative. In such case, the Contractor shall then submit a request for another inspection by the Owner's Representative to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Owner's Representative 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 Contractor for their written acceptance of responsibilities assigned to them in such Certificate, then the Owner for their approval. Upon such acceptance, the Owner shall make payment 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 Owner's Representative 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 Owner's Representative.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Owner's Representative 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 Owner's Representative will promptly make such inspection and, when the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly sign and issue a Final Completion Certificate stating that the Work has been completed in accordance with terms and conditions of the Contract Documents. The Owner's Representative's approval of the final Application 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 Final payment shall not become due until the Contractor submits to the Owner(1) 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, (2) 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, (3) consent of surety, if any, to final payment and (4), 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 Owner's Representative so

confirms, the Owner shall, upon application by the Contractor and certification by the Owner's Representative, 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 Owner's Representative 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 Owner's Representative 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 3.1.8.

§ 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 Owner's Representative.

§ 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 Owner's Representative 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 Owner's Representative 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 Owner's Representative 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 Owner's Representative has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Owner's Representative 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, and Owner's Representative, 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 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.

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§ 11.3 PERFORMANCE BOND AND PAYMENT BOND

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

*(Paragraphs deleted)*

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

*(Paragraphs deleted)*

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Owner's Representative has not specifically requested to examine prior to its being covered, the Owner's Representative 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 Owner's Representative 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 Owner's Representative'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 Owner's Representative, 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.

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§ 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, Owner's Representative 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 Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative 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 Owner's Representative, 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 Owner's Representative 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 Owner's Representative of when and where tests and inspections are to be made so that the Owner's Representative 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 Owner's Representative'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 Owner's Representative.

§ 13.5.5 If the Owner's Representative is to observe tests, inspections or approvals required by the Contract Documents, the Owner's Representative 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.

*(Paragraphs deleted)*

#### § 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 Owner's Representative has not issued a authorization 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 authorization 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 Owner's Representative, 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 Owner's Representative, 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 Owner's Representative'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 Owner's Representative, if the Owner's Representative 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 Owner's Representative 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.

Init.

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 Owner 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 Owner's Representative, if the Owner's Representative 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.

Init.

BID FORMS  
(00 4100)



(00 4113) BID FORM - STIPULATED SUM (Single-Prime Contract)

Invitation No: RFB '16/06/B

Project: CITY OF SANTA FE CIP #400/ NEW MEXICO STATE CAPITOL  
APPROPRIATION PROJECT 14-L-2005: SANTA FE PARKS  
PLAYGROUND SHADE STRUCTURES, INSTALLATION &  
RELATED WORK

Contractor: Sarzon Construction Corporation  
PO Box 6020  
Santa Fe, NM 87502

Date: September 9, 2015

This Bid is submitted to:  
CITY OF SANTA FE  
PURCHASING DIRECTOR  
2651 SIRINGO ROAD, BUILDING H  
SANTA FE, NEW MEXICO 87505

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Owner in the form included in the Bidding Documents to perform and furnish all work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. The Bidder accepts all of the terms and conditions of the Invitation for Bid and Instructions to Bidders, including, without limitation, those dealing with the disposition of Bid security and other Bidding Documents. This Bid will remain subject to acceptance for \*60 days after the day of Bid opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the bonds and other documents required by the Bidding Requirements within fifteen (15) calendar days after the date of the Owner's Notice to Award.
3. In submitting this Bid, the Bidder represents, as more fully set forth in the Agreement, that:
  - A. The Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all of which is hereby acknowledged): *n/a*

No. _____	Date _____	No. _____	Date _____
No. _____	Date _____	No. _____	Date _____
No. _____	Date _____	No. _____	Date _____
No. _____	Date _____	No. _____	Date _____
  - B. The Bidder has familiarized himself with the nature and extent of the Bidding Documents, work, site, locality, and all local condition, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
  - C. The Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Bidders and accepts the determination set forth in the Information Available to Bidders of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely.
  - D. The Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Bidding Documents.
  - E. The Bidder has given the Owner's Representative written notice of all conflicts, errors, or discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Owner's Representative is acceptable to the Bidder.
  - F. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporations, the Bidder has not directly or indirectly induced or solicited any other Bidder

to submit a false or sham Bid; the Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.

- G. It is the intent of the City to award a Contract to the responsible Bidder submitting the lowest total option, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and is in the best interest of the City.

The Scope of Work together with all related work required for comprehensive, fully functioning, warranted systems and finishing includes but is not limited to:

**Installation of (105) pre-manufactured, single post steel frame, surface mount, fabric shade structures at (35) City of Santa Fe Park Playgrounds according to the contract documents and the attached drawings, specifications, schedules and maps.**

Contractor shall be responsible for adherence to the Contract Documents, Construction Documents, Specifications and approved directives.

Contractor shall be responsible for State CID requirements and permit.

Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with the construction.

Contractor shall be responsible for removal and securing of any existing equipment or features necessary to provide for the new work in accordance with the contract documents and to re-install these items in good work condition.

The Bidder will complete the work for the following price(s):

Base Bid One Hundred Thirty Eight Thousand Dollars (\$ 138,000.00)  
(use words)  
Gross Receipts Tax Eleven Thousand Four Hundred  
(8.3125%) Seventy One Dollars & Twenty Five Cents (\$ 11,471.25)  
(use words)  
Total Base Bid Plus Tax One Hundred Forty Nine Thousand (\$ 149,471.25)  
(use words) Four Hundred Seventy One Dollars & Twenty Five Cents

4. The Bidder agrees that:
- A. The work to be performed under the Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed, and that completion of the Base Bid shall be achieved not later than the date directed by the Substantial Completion requirement in the Agreement Between Owner and Contractor under Article 3, except as hereafter extended by valid written "Change Order" by the Owner.
  - B. Should the Contractor neglect, refuse, or otherwise fail to complete the work within the time specified, the Contractor agrees, in partial consideration for the award of this Contract, to pay the Owner the amount of Two Hundred Fifty Dollars (\$250) per consecutive calendar days, not as a penalty, but as liquidated damages for such breach of the Contract.
  - C. The above process shall include all labor, profit, insurance, taxes, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the Contract Documents.
  - D. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.
5. The following documents are attached to and made a condition of this Bid:
- A. Bid Security only for the highest bid option.

- B. Non-Collusion Affidavit of Prime Bidder
- C. Certificate of Bidder Regarding Equal Employment Opportunity
- D. Certificate of Non-Segregated Facilities

E. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

If any of the above requirements have not been met, the bid shall not be read.

6. The terms used in this Bid and the Bidding and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions)

7. If the Bidder is:

A. AN INDIVIDUAL:

By: \_\_\_\_\_  
(Individual's Name)

doing business as:  
\_\_\_\_\_

Business address:  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

(SEAL)

B. A PARTNERSHIP:

By: \_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(General Partner)

Business Address:  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

(SEAL)

C. A CORPORATION

By: Sarcon Construction Corporation  
(Corporation Name)

New Mexico  
(State of Incorporation)

By: Peter Brill  
(Name of person authorized to sign)  
President  
(Title)

If a New Mexico Corporation: 1729516  
Certificate of Incorporation No.

If a Foreign Corporation: \_\_\_\_\_  
Certificate of Authority No.

Attest: Florence Kess  
(Secretary)

Business address: PO Box 6020, Santa Fe, NM 87502  
Telephone: (505) 474.4700



D. A JOINT VENTURE

By: \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

Each joint venture must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

Bidder must fill in the following: (If none, write none)

NM License No.: 55590 Classification: GB98  
NM Taxation and Revenue CRS No.: 02-284743.00.0  
City of Santa Fe Business Registration No.: 15-00097917  
NM Resident Preference Number (if applicable): L-1415968720

One Original and one copy of the Bid Submittal is required

(00 4518) SUBCONTRACTOR LISTING

Note: A subcontractor that submits a bid valued at more than fifty thousand dollars (\$50,000) for a city project that is subject to the Public Works Minimum Wage Act 13-4-10 NMSA 1978) shall be registered with the labor and industrial division of the labor department.

Section 00430

TRADE	NAME	ADDRESS	TELEPHONE#	LICENSE #	NM DEPT. OF LABOR REGISTRATION # (IF APPLICABLE)	SUBCONTRACTOR SIGNATURE - TO BE OBTAINED AFTER AWARD OF CONTRACT
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*None to List*

(00 4519) NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF New Mexico ,  
COUNTY OF Santa Fe )<sup>ss.</sup>

Peter Brill , being first duly sworn, deposes and says that:

- 1) He is the President of Sarcon Construction Corporation , the Bidder that has submitted and attached Bid;
- 2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with the Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Santa Fe, or any person interested in the proposed Contract; and
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: [Signature]  
Title: President

Subscribed and sworn to before me this 9th day of September , 2015.

[Signature]  
Notary Public

My Commission expires: 9.19.2017



**(00 4533) CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means: any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas; time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The construction contractor agrees that (except where he has obtained identical certifications from proposed Subcontractors for specific time periods) he will obtain identical certifications from proposed SUBCONTRACTORS prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provision of the Equal Opportunity Clause and that he will retain such certifications in his files.

By:   
Title: President

Subscribed and sworn to before me this 9th day of September, 2015.

  
Notary Public

My Commission expires: 9.19.2017



(00 4534.1) LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: '16/36/B

Business Name: Sarcon Construction Corporation

Principal Office: 2044 Galisteo St., #1, Santa Fe, NM 87505  
Street Address City State Zip Code

City of Santa Fe Business License # 15.00097917 (Attach Copy to this Form)

Date Principal Office was established: 1995 (Established date must be six months before date of Publication of this RFP or RFB).

CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: [Signature]

Printed Name: Peter Brill

Title: President Date: 9.9.15

Subscribed and sworn before me by Peter Brill this 9<sup>th</sup> day of September, 2015

My commission expires 9.19.2017 [Signature]  
Notary Public



SEAL

**THIS FORM MUST ACCOMPANY THE BID**



# City of Santa Fe, New Mexico BUSINESS LICENSE

THIS BUSINESS IS IN COMPLIANCE WITH THE CITY OF SANTA FE LIVING WAGE ORDINANCE, §28-1 SFCC, 1987

City Of Santa Fe  
PO BOX 909  
Santa Fe NM, 87504

Official Document  
Please Post

Business Name: SARCON CONSTRUCTION CORP

Location: 2044 GALISTEO RD 1

Class: CONTRACTOR - GENERAL

Comment:

Control Number: 0032359

License Number: 15-00097917

Issue Date: January 12, 2015

Expiration Date: December 31, 2015

SARCON CONSTRUCTION CORP  
PO BOX 6020

SANTA FE NM 87502

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO OTHER BUSINESSES OR PREMISES.

(00 4535) RESIDENT VETERANS PREFERENCE CERTIFICATION

n/a

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

Please check one box only:

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\* (Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

(00 4546) CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any Bidder or perspective contractor, or any of their proposed Subcontractors, shall state as an initial part of the Bid or negotiations of the Contract whether he has participated in any previous Contract or subcontract subject to the equal opportunity clause; and, if so, whether he has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Bidder has not filed a compliance report due under applicable instructions, such Bidder shall be required to submit a compliance report within seven calendar days after Bid opening. No Contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

Bidder's Name: Sarcon Construction Corporation

Address: PO Box 6020  
Santa Fe, NM 87502

1. Bidder has participated in a previous Contract or subcontract subject to the equal Opportunity Clause.

Yes       No

2. Compliance reports were required to be filed in connection with such Contract or subcontract.

Yes       No

Certification - The information above is true and complete to the best of my knowledge and belief.

Peter Brill, President  
Name and Title of Signer (please type)

  
Signature

9/9/15  
Date

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A310

**Bid Bond**

KNOW ALL MEN BY THESE PRESENTS, that we SARCON CONSTRUCTION CORPORATION  
P.O. Box 6020, Santa Fe, New Mexico 87502

as Principal, hereinafter called the Principal, and WESTCHESTER FIRE INSURANCE COMPANY  
320 Osuna NE, Suite G-1, Albuquerque, New Mexico 87107

a corporation duly organized under the laws of the State of Pennsylvania  
as Surety, hereinafter called the Surety, are held and firmly bound unto CITY OF SANTA FE  
Purchasing Office, 2651 Siringo Road, Building H, Santa Fe, New Mexico 87505  
as Obligee, hereinafter called the Obligee, in the sum of

FIVE PERCENT (5%) OF THE AMOUNT BID---- Dollars (\$ )

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

SANTA FE PARKS PLAYGROUND SHADE STRUCTURE INSTALLATION

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 9TH day of SEPTEMBER 2015

*[Signature]*  
(Witness)  
SARCON CONSTRUCTION CORPORATION  
*[Signature]* (Principal) (Seal)  
President (Title)

*[Signature]*  
(Witness)  
WESTCHESTER FIRE INSURANCE COMPANY  
*[Signature]* (Surety) (Seal)  
CARL S. CONLEE, III (Title) ATTORNEY-IN-FACT

SUPPLEMENT TO BID FORMS  
(00 4300-4500)

**(00 4313) BID SECURITY FORM**

Review and Approval: This Bond has been executed by a Surety named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

Approved:

\_\_\_\_\_

DATE:

\_\_\_\_\_  
Owner's Representative or Governing Authority

**THIS FORM MUST ACCOMPANY THE BID BOND**



*Power of Attorney*

WESTCHESTER FIRE INSURANCE COMPANY

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the Commonwealth of Pennsylvania pursuant to the following Resolution, adopted by the Board of Directors of the said Company on December 11, 2006, to wit:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such persons written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

Does hereby nominate, constitute and appoint Bartley Hoyt Kinney, III, Carl Samuel Conlee, III, Dean E Vigil, Linda D Dooley, Robert B Lilley, Robert L Brooks, Stuart E Kuyper, all of the City of ALBUQUERQUE, New Mexico, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding One million Two hundred Fifty thousand dollars & zero cents (\$1,250,000.00) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said Stephen M. Hancy, Vice-President, has hereunto subscribed his name and affixed the Corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 23 day of September 2014.

WESTCHESTER FIRE INSURANCE COMPANY



*Stephen M. Hancy*  
Stephen M. Hancy, Vice President

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA ss.

On this 23 day of September, AD. 2014 before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Stephen M. Hancy, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company, that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
KAREN E. BRANDT, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires Sept. 26, 2018

*Karen E. Brandt*  
Notary Public

I, the undersigned Assistant Secretary of the WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

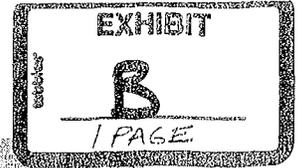
In witness whereof, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of the Corporation; this 9<sup>th</sup> day of September 2015



*William L. Kelly*  
William L. Kelly, Assistant Secretary

THIS POWER OF A TORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER September 23, 2016





October 6, 2015

Jason Kluck  
Facilities Division Project Administrator  
City of Santa Fe, Public Works Dept.

Re: Santa Fe City Parks Shade Structure Proposal

Dear Jason:

Per your request, I am sending you our revised cost proposal based on our initial bid of \$149,471.25 for the Shade Structure project. You will find the related Insurance Certificate and Schedule attached.

The project consists of erecting 95 owner provided shade structures, located at 30 different City parks. Sarcon shall perform the work as indicated in the Bid Documents and in the revised schedule and address list, dated 09/17.

The negotiated contract amount for the Shade Structure project is \$129,763.42 plus gross receipt tax in the amount of \$10,786.58 for a total of \$140,550.00. This includes a contingency of \$ 3,000 that will be used at the contractor's own discretion and will also cover for the required welding of a new base plate at the Ragle Park structure.

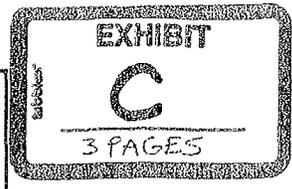
The Contractor proposes to commence the project on January 11, 2016. The Work shall be accomplished within 183 calendar days and be substantially complete by July 12, 2016. The attached schedule is subject to change. It shows an earlier completion date which allows for delays caused out of the contractor's control, for instance potential subsurface or archeological conditions, or material supply problems.

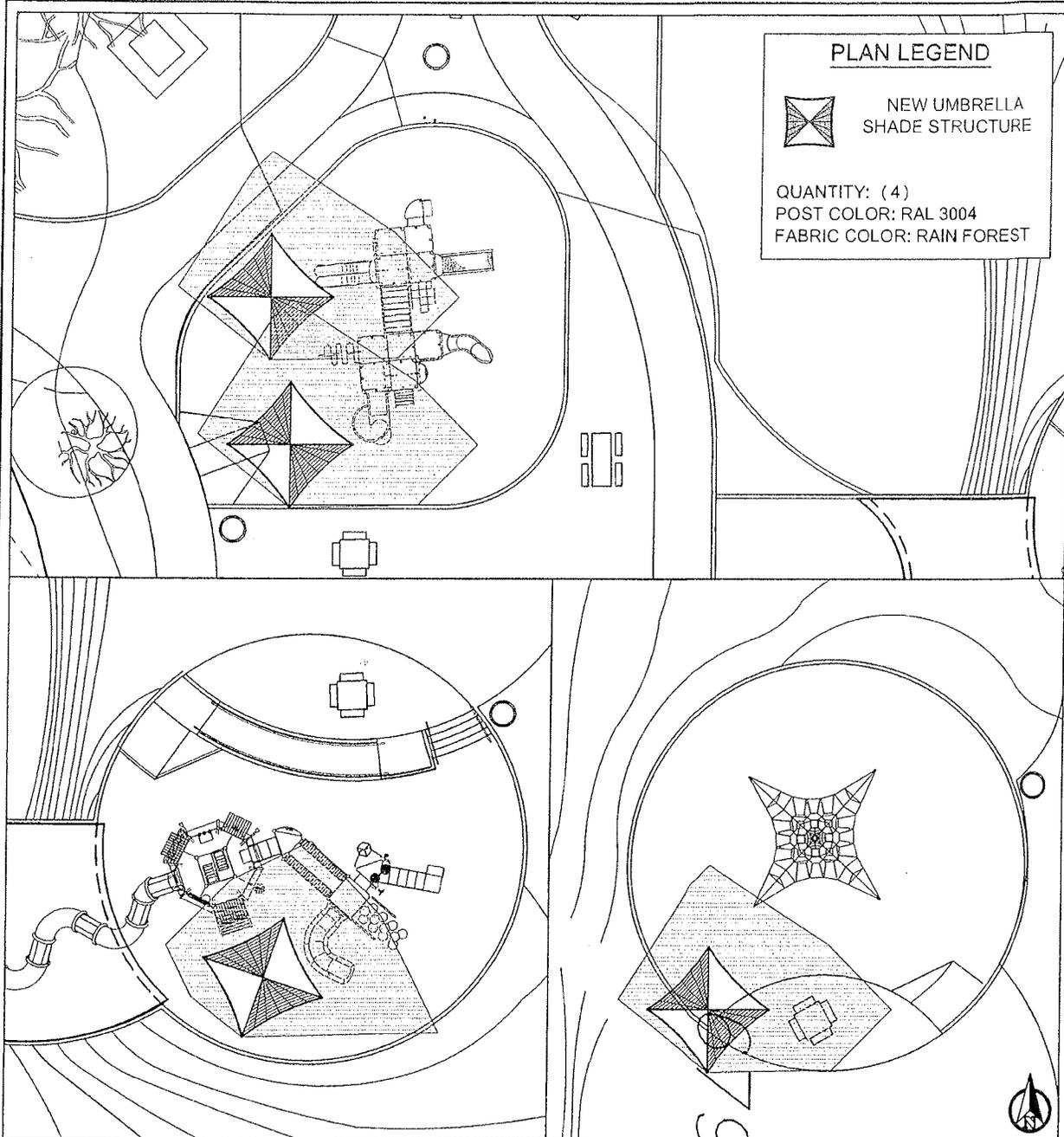
Sincerely,

A handwritten signature in black ink, appearing to read "Katrien Deylgat". The signature is written over a horizontal line.

Katrien Deylgat, Project Manager

City of Santa Fe Playgrounds SCHEDULE OF PARKS & SHADE STRUCTURES				09/17/2015
PARK NAME	USA SHADE PC FRAME COLOR	SUN PORTS SHADESURE FABRIC COLOR	SHADE QUANTITY	
1 Alto	GREEN	ROYAL BLUE	4	
2 Ashbaugh	RED	(1) YELLOW, (2) ROYAL BLUE	3	
3 Candelero	RED	ROYAL BLUE	2	
4 Cielo Vista	PMS 7535 (LSI WRM BRNZ)	YELLOW	3	
5 Dancing Ground	GREEN	ARIZONA	1	
6 Dos Hermanos	BLUE	RAINFORREST	2	
7 Frenchy's	BROWN	ARIZONA	4	
8 Galisteo	BROWN	ARIZONA	1	
9 GCCC	BLUE	SILVER	2	
10 Griego	BLUE	ARIZONA	4	
11 La Resolana	RED	YELLOW	4	
12 Larragoite	BROWN	ROYAL BLUE	4	
13 Las Acequias	RED	YELLOW	5	
14 Las Estancias	GREEN	RAIN FOREST	3	
15 Lopez	BROWN	RAIN FOREST	2	
16 Lorca	BROWN	RAIN FOREST	3	
17 Los Milagos	GREEN	RAIN FOREST	4	
18 Lucero	RED	ROYAL BLUE	4	
19 Maclovio	GREEN	ARIZONA	2	
20 Magers	RAL 3004 (LSI MAROON)	RAIN FOREST	5	
21 MLK Jr.	RAL 3004 (LSI MAROON)	RAIN FOREST	3	
22 Miles	GREEN	ARIZONA	7	
23 Perez	GREEN	YELLOW	4	
24 Ragle	RAL 3004 (LSI MAROON)	RAIN FOREST	4	
25 Rail Yard	PMS 7535 (LSI WRM BRNZ)	TERRACOTTA	3	
26 Rancho Siringo	BLUE	ARIZONA	2	
27 Torreon	GREEN	YELLOW	3	
28 Valentine	RED	YELLOW	2	
29 Villa Linda	BROWN	ROYAL BLUE	3	
30 Young	BEIGE	ROYAL BLUE	2	
TOTAL			95	





**PLAN LEGEND**

 NEW UMBRELLA SHADE STRUCTURE

QUANTITY: (4)  
 POST COLOR: RAL 3004  
 FABRIC COLOR: RAIN FOREST

**GENERAL PLAN NOTES**

1. FIELD VERIFY AND DEMARCATÉ AS APPROPRIATE, ALL SAFETY ZONES OF ALL PLAY EQUIPMENT PRIOR TO UMBRELLA SHADE INSTALLATION.
2. LOCATE UMBRELLA SHADE POSTS AS CLOSE AS POSSIBLE TO, BUT CLEAR OF PLAY EQUIPMENT SAFETY ZONES UNLESS OTHERWISE INDICATED ON THE PLAN. SCALE PLANS TO FIELD LOCATE THE APPROXIMATE INTENDED LOCATION OF EACH STRUCTURE AND THEN DETERMINE FINAL LOCATION IN COMPLIANCE WITH ASTM 9.8.4.1.
3. NAIL & FLAG UMBRELLA SHADE POST LOCATIONS PRIOR TO GROUND DISTURBANCE FOR INSTALLATION.
4. LOCATE UMBRELLA SHADE CANOPIES IN THE ORIENTATION SHOWN ON THE PLANS AND AS INDICATED IN THE SPECIFICATIONS UNLESS THE CONTRACTOR DEEMS THAT THE ORIENTATION MUST CHANGE FOR ASTM COMPLIANCE.
5. IN ALL CASES THE SHADE CANOPY PERIMETER EDGE SHALL NOT BE LOCATED CLOSER THAN 72" IN ANY HORIZONTAL DIRECTION FROM PLAY EQUIPMENT OR WALLS, ETC. WITH A FLAT SURFACE OR DECK GREATER THAN 36" IN HEIGHT TO HELP AVOID VANDALISM TO FABRIC.

SCALE: 1"=20'-0"

SITE PLAN

RAGLE PARK - 2600 ZIA RD.

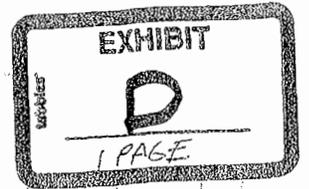


PROJECT: CITY OF SANTA FE  
 PARK PLAYGROUND SHADE STRUCTURES - NM STATE C.A.P. #14/2005  
 TITLE: RAGLE PARK

DATE OF LAST EDIT: 9/22/2015

City of Santa Fe Park Playground Shade Addressing & Lot Information			
	NAME	PHYSICAL ADDRESS	ACRAGE
1	Alto	1043 Alto Street	13.188
2	Ashbaugh	1703 Cerrillos Rd	15
3	Candelerio	2213 Brillante St	12.7
4	Cielo Vista	1058 Calle Carmelita	1.288
5	Dancing Ground	4387 Dancing Ground Rd,	1.658
6	Dos Hermanos	1628 La Cieneguita	3.763
7	Frenchy's	2004 Agua Fria & 901 Osage	16.11
8	Galisteo	2721 Galisteo Court	0.775
9	GCCC	3221 Rodeo Road	1.734
10	Griego	1605 Paseo de la Conquistadora	0.916
11	La Resolana	2904 Camino del Gusto	1.63
12	Larragoite	1504 Agua Fria on Cristobal Colon	9.6
13	Las Acequias	1100 Calle Atajo	6.592
14	Las Estancias	2762 La Silla Dorada & Via Berrenda	1.99
15	Lopez	1230 San Felipe Ave.	1.192
16	Lorca	2075 Calle Lorca	3.13/3.90
17	Los Milagros	4056 Los Milagros	1.156
18	Lucero	2356 Ave de las Campanas	10.48
19	Maclovia	1202 Maclovia St.	0.43
20	Magers	490 Washington Av.	19.979
21	Miles	1027 Camino Carlos Rey	28.389
22	MLK	2738 Calle Serena	1.275
23	Perez	601 Alta Vista St	11.94
24	Ragle	2600 Zia Rd & Yucca St.	34.84
25	Rail Yard	600 S Guadalupe	9.732
26	Rancho Siringo	2515 Rancho Siringo Drive	0.329
27	Torreon	1515 W. Alameda St	3.2
28	Valentine	6704 Valentine Way	1.05
29	Villa Linda	4250 Cerrillos Rd	11.367
30	Young	322 Tesuque Dr	0.906

ID	Task Name	Duration	Start	Finish	1st Quarter	2nd Quarter
					Jan	Feb
1	Meeting with City officials to discuss the process and the locations	1 day	Mon 1/11/16	Mon 1/11/16	Meeting with City officials to discuss the process and the locations	
2	Mark locations of 10 structures	1 day	Tue 1/12/16	Tue 1/12/16	Mark locations of 10 structures	
3	Field trip with City official to approve 10 locations and orientation	1 day	Wed 1/13/16	Wed 1/13/16	Field trip with City official to approve 10 locations and orientation	
4	Drill, install rebar and pour 10 locations	3 days	Thu 1/14/16	Mon 1/18/16	Drill, install rebar and pour 10 locations	
5	Inspection of rebar and concrete	1 day	Tue 1/19/16	Tue 1/19/16	Inspection of rebar and concrete	
6	Erection of structures #1-10	5 days	Wed 1/20/16	Tue 1/26/16	Erection of structures #1-10	
7	Repeat process for structures #11-20	10 days	Wed 1/27/16	Tue 2/9/16	Repeat process for structures #11-20	
8	Erection of structures #21-30	10 days	Thu 2/11/16	Wed 2/24/16	Erection of structures #21-30	
9	Erection of structures #31-40	10 days	Fri 2/26/16	Thu 3/10/16	Erection of structures #31-40	
10	Erection of structures #41-50	10 days	Mon 3/14/16	Fri 3/25/16	Erection of structures #41-50	
11	Erection of structures #51-60	10 days	Tue 3/29/16	Mon 4/11/16	Erection of structures #51-60	
12	Erection of structures #61-70	10 days	Wed 4/13/16	Tue 4/26/16	Erection of structures #61-70	
13	Erection of structures #71-80	10 days	Thu 4/28/16	Wed 5/11/16	Erection of structures #71-80	
14	Erection of structures #81-90	10 days	Fri 5/13/16	Thu 5/26/16	Erection of structures #81-90	
15	Erection of structures #91-95	5 days	Mon 5/30/16	Fri 6/3/16	Erection of structures #91-95	



Task	External Tasks	Manual Task	Finish-only
Split Milestone Summary	External Milestone Inactive Task Inactive Milestone Inactive Summary	Manual Task Duration-only Manual Summary Robit Manual Summary Start-only	Finish-only Deadline Progress

Client#: 1142917

SARCOCON1

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/23/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Southwest Inc. NM - CL, 320 Osuna Rd. NE, Suite G-1, Albuquerque, NM 87107. CONTACT NAME: Sam Conlee / Jenny Coughlin, PHONE: 505 262-2621, FAX: (AG, No:), E-MAIL: jenny.coughlin@usi.biz, ADDRESS: jenny.coughlin@usi.biz. INSURER(S) AFFORDING COVERAGE: INSURER A: Cincinnati Insurance Company, NAIC #: 10677; INSURER B: Builders Trust of New Mexico, NAIC #: 99999; INSURER C: ; INSURER D: ; INSURER E: ; INSURER F: . INSURED: Sarcon Construction Corporation and Peter Brill Inc., PO Box 6020, Santa Fe, NM 87502.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSR, WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include: A GENERAL LIABILITY (EPP0137599), A AUTOMOBILE LIABILITY (EBA0137599), A UMBRELLA LIAB (EPP0137599), B WORKERS COMPENSATION AND EMPLOYERS' LIABILITY (WC10000051692015A).

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Name of Job: City of Santa Fe Parks Playground Shade Structures
Jobsite Address: Various City of Santa Fe parks

The General Liability and Automobile policy(s) include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder & Owner, only when there is a written contract (See Attached Descriptions)



CERTIFICATE HOLDER: City of Santa Fe, PO Box 909, Santa Fe, NM 87504-0909. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

## DESCRIPTIONS (Continued from Page 1)

or written agreement between the named insured and the certificate holder and with regard to on-going and completed operations work performed on behalf of the named insured.

The General Liability, Automobile and Workers Compensation policy(s) provide a Blanket Waiver of Subrogation in favor of the same, when required by written contract.

The General Liability policy contains a special endorsement with "Primary and Noncontributory" wording, when required by written contract.