



AIA[®] Document A142[™] – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

THE DESIGN-BUILDER:
(Name, legal status and address)

THE CONTRACTOR:
(Name, legal status and address)

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 Basic Definitions

§ A.1.1.1 The Design-Build Documents. The Design-Build Documents form the Design-Build Contract between the Owner and Design-Builder.

§ A.1.1.2 The Contract Documents. The Contract Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.3 Architect. The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative.

§ A.1.1.4 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.

§ A.1.1.5 The Project. The Project is the total design and construction of which the Work performed under the Contract Documents may be the whole or a part, and which may include design and construction by the Design-Builder or by separate contractors.

§ A.1.1.6 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.

§ A.1.1.7 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, workmanship for the Work, and performance of related services.

§ A.1.1.8 The Project Manual. The Project Manual is a volume assembled for the Work, which may include the bidding requirements, sample forms, conditions of the Contract and Specifications.

§ A.1.1.9 Neutral. The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 Correlation and Intent of the Contract Documents

§ A.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.

§ A.1.2.2 Organization of the specifications into divisions, sections and articles, an 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.

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

§ A.1.3 Compliance with Applicable Laws

If the Contractor believes that implementation of any instruction received from the Design-Builder would cause a violation of any applicable law, statute, ordinance, building code or rules or regulations, the Contractor shall notify the Design-Builder in writing. The Contractor shall not be obligated to perform any act which the Contractor believes will violate any applicable law.

§ A.1.4 Capitalization

Terms capitalized in these Terms and Conditions include (1) those which are specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.5 Interpretation

§ A.1.5.1 In the interest of brevity the Agreement frequently omits 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.

§ A.1.5.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ A.1.6 Execution of the Agreement

§ A.1.6.1 The Contract Documents shall be signed by the Design-Builder and Contractor.

§ A.1.6.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ A.1.7 Ownership and Use of Documents and Electronic Data

§ A.1.7.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect or the Design-Builder’s other design professionals are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or other design professionals, and unless otherwise indicated the Architect and other design professionals shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Architect or other design professionals, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and other design professionals, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Design-Builder, Architect and other design professionals. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and other design professionals appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and other design professionals. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or other design professionals’ copyrights or other reserved rights.

§ A.1.7.2 Drawings, Specifications and other documents, including those in electronic form, prepared by the Contractor and the Contractor’s consultants are Instruments of Service for use solely with respect to this Project. The Contractor and the Contractor’s consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of this Agreement, the Contractor grants to the Design-Builder a nonexclusive license to reproduce the Contractor’s and the Contractor’s consultants’ Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Design-Builder shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Contractor shall obtain similar nonexclusive licenses from the Contractor’s consultants consistent with this Agreement. Except as provided in Sections A.1.7.4 and A.1.7.5, termination of this Agreement prior to completion of the Work to be performed under this Agreement shall terminate this license. The Design-Builder’s license to reproduce and use the Contractor’s and Contractor’s consultants’ Instruments of Service may be assigned by the Design-Builder to the Owner in connection with the Owner’s use and maintenance of the Project.

§ A.1.7.3 Prior to the Contractor providing to the Design-Builder any Instruments of Service in electronic form or the Design-Builder providing to the Contractor any electronic data for incorporation into the Instruments of Service, the Design-Builder and the Contractor shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement and, if appropriate, adjustments in the Contract Sum and Contract Time.

§ A.1.7.4 In the event that this Agreement is terminated prior to completion of the Work, the license provided in Section A.1.7.2 shall terminate, the Design-Builder shall not make further reproductions of Instruments of Service and

the Design-Builder shall return to the Contractor within seven (7) days of termination all originals and reproductions in the Design-Builder's possession or control, except as follows:

- .1 In the event the Design-Builder terminates the Contractor for cause pursuant to Section A.14.2, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Design-Builder to authorize other appropriately credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.
- .2 In the event the Contractor terminates this Agreement with the Design-Builder for cause pursuant to Section A.14.1, the Contractor shall assign the license to the Owner in accordance with the provisions of Section A.1.7.5 of this Agreement.

§ A.1.7.5 If the Owner-Design-Builder Agreement is terminated for any reason other than the default of the Owner, the Contractor shall convey and shall require its design professionals to convey to the Owner a nonexclusive license to use the Contractor's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon (1) payment to the Contractor of all amounts due to the Contractor and the Contractor's design professionals, and (2) the Contractor's receipt of the Owner's written notice to the Contractor of the Owner's assumption of the Design-Builder's duties and obligations under this Agreement; or if the Owner fails to provide such written notice, (1) payment to the Contractor of all amounts due to the Contractor and the Contractor's design professionals, and (2) the Contractor's receipt of the Owner's written agreement to indemnify and hold harmless the Contractor and its design professionals from all claims, as well as any expense, including legal fees, which the Contractor and its design professionals shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Contractor shall incorporate the requirements of this Section A.1.7.5 in all agreements with its design professionals.

§ A.1.7.6 Except for the licenses granted in Sections A.1.7.2, A.1.7.4, and A.1.7.5, no other license or right shall be deemed granted or implied under this Agreement. The Design-Builder shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Contractor. However, subject to the Design-Builder's compliance with its obligations under this Contract, the Design-Builder shall be permitted to authorize the Design-Builder's consultants, contractors, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service for the following purposes: performing services; executing Work; and coordinating services with those of the Architect, the Architect's consultants, and the Design-Builder's other design professionals and consultants. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the respective copyright owners. The Design-Builder shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Design-Builder obtains the prior written agreement of the Contractor and the Contractor's consultants. Any unauthorized use of the Instruments of Service shall be at the Design-Builder's sole risk and without liability to the Contractor and the Contractor's consultants.

ARTICLE A.2 DESIGN-BUILDER

§ A.2.1 General

§ A.2.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder shall designate in writing a representative who shall have express authority to bind the Design-Builder with respect to all Project matters requiring the Design-Builder's approval or authorization. The Design-Builder may also delegate in writing certain responsibilities of the Design-Builder to the Architect or other design professionals. The Design-Builder shall render decisions in a timely manner and in accordance with the Contractor's schedule submitted to the Design-Builder.

§ A.2.1.2 The Design-Builder shall furnish to the Contractor within 15 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.

§ A.2.1.3 If the Design-Builder asserts or defends a claim against the Owner which relates to the Work of the Contractor, the Design-Builder shall make available to the Contractor information relating to that portion of the claim which relates to the Work of the Contractor.

§ A.2.2 Information and Services Required of the Design-Builder

§ A.2.2.1 The Design-Builder shall be responsible to provide surveys, if not required by the Contract Documents to be provided by the Contractor, describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.2 The Design-Builder shall provide, to the extent available to the Design-Builder and if not required by the Contract Documents to be provided by the Contractor, the results and reports of prior tests, inspections or investigations conducted for the Project, involving structural or mechanical systems; chemical, air and water pollution; hazardous materials or environmental and subsurface conditions; and information regarding the presence of pollutants at the Project site.

§ A.2.2.3 The Design-Builder shall cooperate with the Contractor in securing building and other permits, licenses and inspections. The Design-Builder shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Contractor under the Contract Documents.

§ A.2.2.4 The services, information, surveys and reports required to be provided by the Design-Builder under Section A.2.2 shall be furnished at the Design-Builder's expense, and the Contractor shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Contract Documents or to the extent the Design-Builder advises the Contractor to the contrary in writing.

§ A.2.2.5 If the Design-Builder observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Contract Documents, the Design-Builder shall give prompt written notice thereof to the Contractor.

§ A.2.2.6 The Design-Builder shall, at the request of the Contractor, prior to execution of the Agreement and promptly upon request thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Design-Builder's obligations under the Agreement. The Design-Builder shall promptly make available to the Contractor non-confidential financial information received from the Owner which affects this Agreement and which becomes available to the Design-Builder subsequent to execution of this Agreement.

§ A.2.2.7 The Design-Builder shall communicate through the Contractor with persons or entities employed or retained by the Contractor, unless otherwise directed by the Contractor.

§ A.2.2.8 The Design-Builder shall furnish the services of geotechnical engineers or other consultants, if not required by the Contract Documents to be provided by the Contractor, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Contractor to properly carry out the design services, if any, to be provided by the Contractor's consultants. Such services may include, but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.9 The Design-Builder shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Design-Builder's program.

§ A.2.3 Design-Builder Review and Inspection

§ A.2.3.1 The Design-Builder may visit the site at intervals appropriate to the stage of the Contractor's operations to become generally familiar with and to keep informed about the progress and quality of the portion of the Work completed. However, the Design-Builder shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design-Builder shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section A.3.3.1.

§ A.2.3.2 The Design-Builder shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design-Builder shall 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 for the Contractor.

§ A.2.3.3 The Design-Builder may reject Work that does not conform to the Contract Documents. Whenever the Design-Builder considers it necessary or advisable, the Design-Builder shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design-Builder 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 Design-Builder to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.4 The Design-Builder may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Design-Builder and the Contractor agree to in writing.

§ A.2.3.5 The Design-Builder shall review and approve or take other appropriate action upon the Contractor's submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design-Builder's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor or separate contractors. 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.

§ A.2.3.6 The Design-Builder's review and approval of the Contractor's submittals required by the Contract Documents shall not relieve the Contractor of responsibility for compliance with the Contract Documents unless (a) the Contractor has notified the Design-Builder of the deviation prior to approval by the Design-Builder, or (b) the Design-Builder has approved a change in work reflecting any deviations from the requirements of the Contract Documents

§ A.2.3.7 The Design-Builder shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.3.8 The Design-Builder shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ A.2.4 Design-Builder's Right to Stop Work

§ A.2.4.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Design-Builder 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 Design-Builder to stop the Work shall not give rise to a duty on the part of the Design-Builder to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 Design-Builder's Right to Carry Out the Work

§ A.2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Design-Builder to commence and continue correction of such default or neglect with diligence and promptness, the Design-Builder may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Design-Builder may, without prejudice to other remedies the Design-Builder 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. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Design-Builder.

ARTICLE A.3 CONTRACTOR

§ A.3.1 General

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

authorized representative. The Contractor's representative is authorized to act on the Contractor's behalf with respect to the Project.

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

§ A.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 Design-Builder in the Design-Builder's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ A.3.2 Review of Contract Documents and Field Conditions by Contractor

§ A.3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Design-Builder pursuant to Section A.2.2.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Design-Builder as a request for information in such form as the Design-Builder may require.

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

§ A.3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design-Builder in response to the Contractor's notices or requests for information pursuant to Sections A.3.2.1 and A.3.2.2, the Contractor shall make Claims as provided in Sections A.4.1.5 and A.4.1.7. If the Contractor fails to perform the obligations of Sections A.3.2.1 and A.3.2.2, the Contractor shall pay such costs and damages to the Design-Builder as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Design-Builder or the Design-Builder's design professionals for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Design-Builder.

§ A.3.3 Supervision and Construction Procedures

§ A.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 Design Builder and shall not proceed with that portion of the Work without further written instructions from the Design-Builder. 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 Design-Builder shall be solely responsible for any resulting loss or damage.

§ A.3.3.2 The Contractor shall be responsible to the Design-Builder 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.

§ A.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.

§ A.3.4 Labor and Materials

§ A.3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 The Contractor may make substitutions only with the consent of the Design-Builder, after evaluation by the Design-Builder and in accordance with a Change Order.

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

§ A.3.5 Warranty

The Contractor warrants to the Design-Builder that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design-Builder, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 Taxes

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

§ A.3.7 Permits, Fees and Notices

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

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

§ A.3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Design-Builder in writing, and necessary changes shall be accomplished by appropriate Modification.

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

§ A.3.8 Allowances

§ A.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 Design-Builder may direct, but the Contractor shall not be required to employ persons or entities to which the Contractor has reasonable objection.

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

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

§ A.3.9 Superintendent

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

§ A.3.10 Contractor's Construction Schedules

§ A.3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Design-Builder's information the 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.

§ A.3.10.2 The construction schedule shall indicate proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment requiring long-lead time, and the Design-Builder's occupancy requirements showing portions of the Project having occupancy priority. The Contractor shall keep current, for the Design-Builder's approval, the schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Design-Builder reasonable time to review submittals.

§ A.3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Design-Builder.

§ A.3.11 Documents and Samples at the Site

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

§ A.3.12 Shop Drawings, Product Data and Samples

§ A.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.

§ A.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.

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

§ A.3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design-Builder is subject to the limitations of Sections A.2.3.5 and A.3.13.1. Informational submittals upon which the Design-Builder is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design-Builder without action.

§ A.3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design-Builder Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Design-Builder or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design-Builder without action.

§ A.3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria

related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ A.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 Design-Builder.

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

§ A.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 Design-Builder on previous submittals. In the absence of such written notice the Design-Builder's approval of a resubmission shall not apply to such revisions.

§ A.3.13 Professional Services Provided by Contractor

§ A.3.13.1 The Contractor shall provide professional services only to the extent specifically required by the Contract Documents for a portion of the Work or if the Contractor otherwise 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 by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Design-Builder or the Design-Builder's design professionals will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services 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 by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design-Builder.

§ A.3.13.2 The Contractor shall obtain from each of the Contractor's and Subcontractors' design professionals and shall deliver to the Design-Builder certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the criteria provided by the Design-Builder, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project, and (b) that the Design-Builder and its design professionals shall be entitled to rely upon the representations and statements contained in such certifications.

§ A.3.13.3 If the Design-Builder requests the Contractor's design professionals to execute certificates other than those required by Section A.3.13.2, the proposed language of such certificates shall be submitted to such design professionals for review and negotiation at least 14 days prior to the requested dates of execution. Such design professionals shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their services. With respect to such certifications, the Contractor's design professionals shall certify that to the best of their knowledge, information and belief the documents or services to which such certifications pertain (a) are consistent with the Contract Documents except to the extent specifically agreed upon by the Design-Builder or identified in such certificate, (b) comply with applicable professional practice standards, and (c) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project. The Design-Builder shall be entitled to rely upon the representations and statements contained in such certifications.

§ A.3.14 Use of Site

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

§ A.3.15 Cutting and Patching

§ A.3.15.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.15.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Design-Builder 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 Design-Builder or a separate contractor except with written consent of the Design-Builder and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Design-Builder or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ A.3.16 Cleaning Up

§ A.3.16.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall not be held responsible for unclean conditions caused by other contractors.

§ A.3.16.2 If the Contractor fails to clean up as provided in the Contract Documents, the Design-Builder may do so and the cost thereof shall be charged to the Contractor within a reasonable period of time.

§ A.3.17 Access to Work

The Contractor shall provide the Design-Builder access to the Work in preparation and progress wherever located.

§ A.3.18 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 Design-Builder, the Design-Builder's consultants, the Owner and the Owner's consultants 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 Design-Builder, the Design-Builder's consultants, the Architect, or the Owner or Owner's consultants. 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 Design-Builder.

§ A.3.19 Indemnification

§ A.3.19.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Design-Builder, the Design-Builder's consultants, the Owner and the Owner'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 which would otherwise exist as to a party or person described in this Section A.3.19.

§ A.3.19.2 In claims against any person or entity indemnified under this Section A.3.19 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 A.3.19.1 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 A.4 DISPUTE RESOLUTION

§ A.4.1 Claims and Disputes

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Design-Builder and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 **Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Contractor shall proceed diligently with performance of the Contract and the Design-Builder shall continue to make payments in accordance with the Contract Documents.

§ A.4.1.4 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Design-Builder will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will make an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design-Builder 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 Design-Builder shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within 21 days after the Design-Builder has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the parties cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be initially determined in accordance with Section A.4.2.

§ A.4.1.5 **Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design-Builder, (2) an order by the Design-Builder to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design-Builder, (4) failure of payment by the Design-Builder, (5) termination of the Contract by the Design-Builder, (6) Design-Builder's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 **Claims for Additional Time**

§ A.4.1.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 **Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Design-Builder or Contractor, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 **Claims for Consequential Damages.** The Contractor and Design-Builder waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes damages incurred by either party for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Contractor's cost of, or time required for, performance of the Work, the Contractor shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Design-Builder and Contractor cannot agree upon an adjustment in the Contract Sum or Contract Time, the Contractor shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 Resolution of Claims and Disputes

§ A.4.2.1 **Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Contract Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Design-Builder and Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Contractor and persons or entities other than the Design-Builder.

§ A.4.2.2 **Decision by Architect.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Contract Documents, the Design-Builder may appoint the Architect to resolve disputes between the Design-Builder and the Contractor, and Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation of all Claims between the Design-Builder and Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Design-Builder.

§ A.4.2.3 **Decision by Design-Builder.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Contract Documents, and if the Design-Builder has not appointed the Architect to resolve disputes between the Design-Builder and the Contractor, then, except for those Claims arising under Sections A.10.3 and A.10.5, the Design-Builder shall provide an initial decision. An initial decision by the Design-Builder shall be required as a condition precedent to mediation of all Claims between the Design-Builder and Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design-Builder with no decision having been rendered by the Design-Builder.

§ A.4.2.4 The initial decision pursuant to Sections A.4.2.1, A.4.2.2 or A.4.2.3 shall be in writing, shall state the reasons therefore and shall notify the parties 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 first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement.

§ A.4.2.5 In the event of a Claim against the Contractor, the Design-Builder 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 Design-Builder may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.6 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 Mediation

§ A.4.3.1 Any Claim arising out of or related to the Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5 shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 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.

§ A.4.4 Arbitration

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may 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 institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration between the Design-Builder or Contractor and any person or entity with whom the Design-Builder or Contractor has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder if such arbitration involves common issues of law or fact relating to the performance of this Agreement. No other arbitration arising out of or relating to the Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Agreement or not a party to an agreement with the Design-Builder or Contractor, except by written consent containing a specific reference to the Agreement signed by the Design-Builder and Contractor and any other person or entities sought to be joined. 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 or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. 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.

§ A.4.4.5 Judgment on Final Award. 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.

ARTICLE A.5 SUBCONTRACTORS

§ A.5.1 Definitions

§ A.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.

§ A.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.

§ A.5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ A.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 Design-Builder 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 Design-Builder will promptly reply to the Contractor in writing stating whether or not the Design-Builder, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Design-Builder to reply promptly shall constitute notice of no reasonable objection.

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

§ A.5.2.3 If the Design-Builder has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Design-Builder 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.

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

§ A.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 Design-Builder. Each subcontract agreement shall preserve and protect the rights of the Design-Builder under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Design-Builder. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ A.5.4 Contingent Assignment of Subcontracts

§ A.5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Design-Builder provided that

- .1 assignment is effective only after termination of the Contract by the Design-Builder for cause pursuant to Section A.14.2 and only for those subcontract agreements which the Design-Builder 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.

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

ARTICLE A.6 CONSTRUCTION BY DESIGN-BUILDER OR BY SEPARATE CONTRACTORS

§ A.6.1 Design-Builder's Right to Perform Construction and to Award Separate Contracts

§ A.6.1.1 The Design-Builder and Owner reserve the right to perform construction related to the Project with their own forces and to award separate contracts in connection with other portions of the Project. The Contractor shall cooperate with the Design-Builder, other contractors and the Owner's own forces whose work might interfere with the Contractor's Work. If the Contractor claims that delay or additional cost is involved because of such action by the Design-Builder or Owner, the Contractor shall make such Claim as provided in Section A.4.1.

§ A.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 Design-Builder/Contractor Agreement.

§ A.6.1.3 The Design-Builder shall provide for coordination of the activities of the Design-Builder'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 Design-Builder in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Design-Builder until subsequently revised.

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

§ A.6.2 Mutual Responsibility

§ A.6.2.1 The Contractor shall afford the Design-Builder 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.

§ A.6.2.2 If part of the Contractor's Work depends for proper execution or results upon design, construction or operations by the Design-Builder or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design-Builder apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Design-Builder'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.

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

§ A.6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Design-Builder or separate contractors.

§ A.6.2.5 The Design-Builder and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.15.

§ A.6.3 Design-Builder's Right to Clean Up

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

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 General

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

§ A.7.1.2 A Change Order shall be based upon agreement between the Design-Builder and Contractor. A Construction Change Directive may be issued by the Design-Builder with or without agreement by the Contractor. A minor change in the Work may be issued by the Design-Builder alone.

§ A.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 in an order for a minor change in the Work.

§ A.7.2 Change Orders

§ A.7.2.1 A Change Order is a written instrument signed by the Design-Builder and Contractor stating their agreement upon all of the following:

- .1 A 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.

§ A.7.2.2 If the Design-Builder requests a proposal for a change in the Work from the Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Contractor for reasonable costs incurred, if any, for design services provided in connection with preparation of proposed revisions to the Contract Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9.
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design-Builder of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Design-Builder on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause A.7.3.3.3, the Contractor shall keep and present, in such form as the Design-Builder may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

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

§ A.7.3.7 The amount of credit to be allowed by the Contractor to the Design-Builder for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Design-Builder, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Design-Builder shall make an interim determination for purposes of monthly payment for those costs.

That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Contractor to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Design-Builder and Contractor reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 Minor Changes in the Work

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

ARTICLE A.8 TIME

§ A.8.1 Definitions

§ A.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.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Design-Builder.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Design-Builder in accordance with Section A.9.8.

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

§ A.8.2 Progress and Completion

§ A.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.

§ A.8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Design-Builder in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Contractor and Design-Builder. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Design-Builder, the Contractor shall notify the Design-Builder in writing not less than ten days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ A.8.3 Delays and Extensions of Time

§ A.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, Design-Builder or of a separate contractor or other party employed by the Owner or Design-Builder, 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 Design-Builder pending resolution of disputes pursuant to the Contract Documents, or by other causes which the Design-Builder determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Design-Builder may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

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

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 Contract Sum

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

§ A.9.2 Schedule of Values

Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Contractor shall submit to the Design-Builder an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Design-Builder may require. This schedule, unless objected to by the Design-Builder, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 Applications for Payment

§ A.9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design-Builder an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Design-Builder may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

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

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

§ A.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 Design-Builder, 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 Design-Builder to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and Design-Builder's interests and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Contractor warrants that title to all Work other than Instruments of Service 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 Design-Builder 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.

§ A.9.4 Acknowledgement of Application for Payment

The Design-Builder shall, within seven days after receipt of the Contractor's Application for Payment, issue to the Contractor a written acknowledgement of receipt of the Contractor's Application for Payment indicating the amount the Design-Builder has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 Decisions to Withhold Payment

§ A.9.5.1 The Design-Builder may withhold approval of a payment in whole or in part to the extent reasonably necessary to protect the Design-Builder due to the Design-Builder's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Contract Documents. The Design-Builder may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Design-Builder from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of the following:

- .1 Defective Work not remedied;
- .2 Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Design-Builder is provided by the Contractor;
- .3 Failure of the Contractor to make payments properly to Subcontractors or for design services 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, Design-Builder 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 Persistent failure to carry out the Work in accordance with the Contract Documents.

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

§ A.9.6 Progress Payments

§ A.9.6.1 Within seven days after the Design-Builder has received payment from the Owner on account of Work performed by the Contractor and for which the Design-Builder has acknowledged to be due pursuant to Section A.9.4.1, the Design-Builder shall make payment of that amount to the Contractor. If the Design-Builder does not receive such payment from the Owner for any cause which is not the fault of the Contractor, the Design-Builder shall pay the Contractor, on demand, that amount.

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

§ A.9.6.3 The Design-Builder shall have no obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

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

§ A.9.6.5 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.

§ A.9.6.6 Unless the Contractor provides the Design-Builder 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 Design-Builder. Nothing contained herein shall require money to be placed in a separate account and not be 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.

§ A.9.7 Failure of Payment

If the Design-Builder does not forward to the Owner for payment the Contractor's Application for Payment as approved by the Design-Builder within seven days after the Design-Builder's receipt from the Contractor, or does not issue payment within seven days after the Design-Builder's receipt from the Owner of approved amounts due to the Contractor, then the Contractor may, upon seven additional days' written notice to the Design-Builder, 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ A.9.8 Substantial Completion

§ A.9.8.1 When the Contractor considers that the Work, or a portion thereof which the Design-Builder agrees to accept separately, is substantially complete in accordance with the Contract Documents so that the Work is suitable for its intended use, the Contractor shall prepare and submit to the Design-Builder 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.

§ A.9.8.2 Upon receipt of the Contractor's list, the Design-Builder shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design-Builder's inspection discloses any item, whether or not included on the Contractor's list, which is not substantially complete and in accordance with the requirements of the Contract Documents, the Contractor shall complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Design-Builder to determine whether the Contractor's Work is substantially complete.

§ A.9.8.3 In the event of a dispute regarding whether the Contractor's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.4 When the Contractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Contract Documents, the Design-Builder shall, upon application by the Contractor, make prompt application to the Owner for payment of such Work in accordance with the requirements of the Contract Documents. Promptly upon receipt by the Design-Builder of amounts received from the Owner on account of such application, the Design-Builder shall, to the full extent allowed in the Design-Build Documents, make payment to the Contractor. If a full release of retainage is allowed under the Design-Build Documents for the Contractor's Work prior to the completion of the entire Project, such payment to the Contractor shall consist of the entire unpaid balance of the Contract Sum less any amount necessary to cover costs of items to be completed or corrected by the Contractor. If the Design-Build Documents do not allow for a full release of retainage, then such payment shall consist of an amount which, when added to previous payments to the Contractor, will reduce the retainage on the Contractor's substantially completed Work to the same percentage of retainage as that retained on the Design-Builder's Work under the Design-Build Documents, less any amount necessary to cover costs of items to be completed or corrected by the Contractor. Warranties required by the Contract Documents shall commence on the date determined in accordance with the provisions of the Design-Build Documents.

§ A.9.9 Partial Occupancy or Use

§ A.9.9.1 The Owner or Design-Builder 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, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Design-Builder 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 completion or 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 Design-Builder as provided under Section A.9.8.1. 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 Design-Builder and Contractor.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Design-Builder and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.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.

§ A.9.10 Final Completion and Final Payment

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design-Builder shall promptly make such inspection and, when the Design-Builder finds the Work acceptable under the Contract Documents and fully performed, the Design-Builder shall, subject to Section A.9.10.2, promptly make final payment to the Contractor.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder has received payment from the Owner on account of the Contractor's final Application for Payment and until the Contractor submits to the Design-Builder (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Design-Builder or the Owner's property might be responsible or encumbered (less amounts withheld by Design-Builder) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design-Builder, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Design-Builder, 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 Documents, to the extent and in such form as may be designated by the Design-Builder. If a Contractor refuses to furnish a release or waiver required by the Design-Builder, the Contractor may furnish a bond satisfactory to the Owner and Design-Builder to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Design-Builder all money that the Design-Builder may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees. If, for any cause which is not the fault of the Contractor, the Design-Builder does not receive

timely payment or does not pay the Contractor within seven days after receipt of payment from the Owner, final payment to the Contractor shall be made upon demand.

§ A.9.10.3 If, after the Design-Builder determines that the Contractor's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Contractor or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Design-Builder shall, upon application by the Contractor and the Design-Builder's receipt of payment from the Owner on account of such application, 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. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Design-Builder except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract Documents 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.

§ A.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 A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 Safety Precautions and Programs

The Contractor shall comply with all safety precautions and programs initiated and maintained by the Design-Builder in connection with the Project and the Contractor's performance of the Work. In accordance with such safety precautions and programs, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, the Contractor shall assume the duties and responsibilities set forth in Sections A.10.2 through A.10.6, below.

§ A.10.2 Safety of Persons and Property

§ A.10.2.1 The Contractor shall take reasonable precautions for the 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 or under the care, custody or control of the Contractor or the Contractor's 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.

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

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

§ A.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.

§ A.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 Clauses A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Contractor, a 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 Clauses A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design-Builder or anyone directly or indirectly employed by the Owner or Design-Builder, or by anyone for whose acts the Owner or Design-Builder 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 A.3.19.

§ A.10.2.6 The Contractor shall designate in writing to the Design-Builder a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 Hazardous Materials

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

§ A.10.3.2 The Design-Builder shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Design-Builder shall furnish in writing to the Contractor 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 will promptly reply to the Design-Builder in writing stating whether or not the Contractor has reasonable objection to the persons or entities proposed by the Design-Builder. If the Contractor has an objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Design-Builder and Contractor. 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 shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of execution of the Agreement, is not disclosed in the Contract Documents and presents the risk of bodily injury or death as described in Section A.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) to the extent that such damage, loss or expense is not due to the active negligence of the Contractors, Subcontractors, Architect, Architect's consultants and their agents and employees.

§ A.10.4 The Design-Builder shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

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

§ A.10.6 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 The Design-Builder and Contractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as described in Exhibit E, Insurance and Bonds, or elsewhere in the Contract Documents.

§ A.11.2 The Contractor shall provide surety bonds of the types, for such penal sums and subject to such terms and conditions as described in Exhibit E, Insurance and Bonds, or elsewhere in the Contract Documents.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 Uncovering of Work

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Contract Documents, it must be uncovered for the Design-Builder's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Design-Builder has not specifically requested to examine prior to its being covered, the Design-Builder 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 Design-Builder's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Design-Builder or a separate contractor, in which event the Design-Builder shall be responsible for payment of such costs.

§ A.12.2 Correction of Work

§ A.12.2.1 Before or After Substantial Completion of the Contractor's Work

The Contractor shall promptly correct Work rejected by the Design-Builder or failing to conform to the requirements of the Contract Documents, whether discovered before or after the Design-Builder's determination that the Contractor's Work or designated portion thereof is substantially complete and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing shall be at the Contractor's expense.

§ A.12.2.2 After Substantial Completion of the Contractor's Work

§ A.12.2.2.1 In addition to the Contractor's obligations under Section A.3.5, if, within one year after the date of the Design-Builder's determination that the Contractor's Work or designated portion thereof is substantially complete or after the date for commencement of warranties established under Section A.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 Design-Builder to do so unless the Design-Builder has previously given the Contractor a written acceptance of such condition. The Design-Builder shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Design-Builder fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Design-Builder 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 Design-Builder, the Design-Builder may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after the Design-Builder's determination that the Contractor's Work is substantially complete by the period of time between such determination and the actual performance of the Work.

§ A.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 A.12.2.

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

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

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section A.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.

§ A.12.3 Acceptance of Nonconforming Work

If the Design-Builder prefers to accept Work not in accordance with the requirements of the Contract Documents, the Design-Builder may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 Successors and Assigns

§ A.13.2.1 The Design-Builder and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section A.13.2.2, neither party to the Contract Documents shall assign the Contract Documents 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 Documents.

§ A.13.2.2 This Agreement may be assigned by the Design-Builder to the Owner provided that

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause and only if the Owner accepts this Agreement by notifying the Contractor in writing; and
- .2 assignment is subject to the prior rights of the Design-Builder's surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.13.3 Written Notice

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

§ A.13.4 Rights and Remedies

§ A.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.

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

§ A.13.5 Tests and Inspections

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Design-Builder or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give timely notice of when and where tests and inspections are to be made so that the Design-Builder may be present for such procedures.

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

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.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, shall be at the Contractor's expense.

§ A.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 Design-Builder.

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

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

§ A.13.6 Commencement of Statutory Limitation Period

§ A.13.6.1 As between the Design-Builder and Contractor:

- .1 Before Substantial Completion of the Contractor's Work. As to acts or failures to act occurring prior to the relevant date of the Design-Builder's determination that the Contractor's Work or designated portion is substantially complete, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of such determination;
- .2 Between Substantial Completion of the Contractor's Work and Final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of the Design-Builder's determination that the Contractor's Work or designated portion is substantially complete and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Design-Builder, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE AGREEMENT

§ A.14.1 Termination by the Contractor

§ A.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 which requires all Work to be stopped.
- .2 An act of government, such as a declaration of national emergency which requires all Work to be stopped.
- .3 Because the Design-Builder has not made payment to the Contractor as required in the Contract Documents.
- .4 The Design-Builder has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section A.2.2.6.

§ A.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 Design-Builder, as described in Section A.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.

§ A.14.1.3 If one of the reasons described in Section A.14.1.1 or A.14.1.2 exists, the Contractor may, upon seven days' written notice to the Design-Builder, terminate the Contract and recover from the Design-Builder payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.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, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Contractor because the Design-Builder has persistently failed to fulfill the Design-Builder'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 Design-Builder, terminate the Contract and recover from the Design-Builder as provided in Section A.14.1.3.

§ A.14.2 Termination by the Design-Builder for Cause

§ A.14.2.1 The Design-Builder may terminate the Contract if the Contractor

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for services, materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ A.14.2.2 When any of the above reasons exist, the Design-Builder may without prejudice to any other rights or remedies of the Design-Builder 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 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of Subcontracts pursuant to Section A.5.4.1; and
- .3 finish the Work by whatever reasonable method the Design-Builder may deem expedient. Upon request of the Contractor, the Design-Builder shall furnish to the Contractor a detailed accounting of the costs incurred by the Design-Builder in finishing the Work.

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

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Design-Builder 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 Design-Builder.

§ A.14.3 Suspension by the Design-Builder for Convenience

§ A.14.3.1 The Design-Builder 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 Design-Builder may determine.

§ A.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 A.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.

§ A.14.4 Termination by the Design-Builder for Convenience

§ A.14.4.1 The Design-Builder may, at any time, terminate the Contract for the Design-Builder's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Design-Builder of such termination for the Design-Builder's convenience, the Contractor shall

- .1 cease operations as directed by the Design-Builder in the notice;
- .2 take actions necessary, or that the Design-Builder 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.

§ A.14.4.3 In case of such termination for the Design-Builder'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.