



AIA[®] Document C199[™] – 2010 Exhibit A

Terms and Conditions

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

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

The Company:
(Company's name and address of the principal place of business)

The Contractor:
(Name, legal status, address and other information)

INDEX

(Topics and numbers in bold are subheads. Because all article and section numbers in this Exhibit begin with the letter "A", the letter "A" is removed from this index.)

Acceptance of Nonconforming Work

5.23.6.6, 5.23.8.3, **5.25.3**

Access to Work

5.16, 5.20.1, 5.2.5.1

Actual cost

5.3.3, 5.8.2

Additional costs

5.7.4, 5.7.5, 5.20.1, 5.21.3.7, 5.24.3.2, 8.1.5

Additional Time, Claims for

3.2, 5.7.4, 5.7.5, 5.10.2, 5.22, **8.1.6**

Allowances

4.4.7, **5.8**

All-risk property insurance policy

6.3.1, 6.3.1.1

Applications for Payment

5.21.3.9, 5.23.2, 5.23.3.1.2, **5.23.3**, 5.23.4, 5.23.5.1, 5.23.7, 6.1.3

Approvals

2.3.5, 3.1.2, 4.2.2, 4.5.1, 4.5.5, 4.6.5, 5.1.2, 5.10.2, 5.12.9, 7.3.2, 7.4.1, 7.4.2, 7.4.3, 7.4.4, 7.4.5, 7.6.2

Arbitration

6.3.10, **8.4**, 8.4.1, 8.4.4.1

Architect

1.3.5, 1.3.6, 2.3.3, 5.21.2.1, 5.21.3.5, 5.21.3.7, 5.24.2.5

Asbestos

5.24.3.1

Assigns

7.1, 7.1.1

Attorney's fees

5.18.1, 5.24.3.3, 5.26.2.2

Award of separate contracts

2.20.1.1, 5.20.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.19.2

Basic Definitions

1.3

Binding dispute resolution

6.3.9, 6.3.10, 8.2.5, 8.2.6.1, 8.3.1, 8.3.2

Bodily injury, risk

5.24.3.3

Boiler and Machinery Insurance

6.3.2

Bonds, Payment and Performance

5.21.3.7.4, 5.26.1.7, 5.26.2.3, **6.4**, 6.3.9, 6.4.1, 6.4.2

Boring, test

2.3.7

Budget for the Work

2.3.4, 4.3.4, 4.5.1

Builder's risk

6.3.1

Building Information Model

1.1, 1.3.3, 1.3.5, 1.4.2, 1.5.1, 1.6, 4.3.4, 4.5.1

Building permit

5.7.1

Capitalization

1.4.4

Certificates for Payment

5.23.4, 5.23.4.2, 5.23.4.3, 5.23.5.1, 5.23.6.1, 5.23.7, 5.26.1.1, 5.26.2.1

Certificates for Substantial Completion

5.26.1.1, 5.26.1.5, 5.26.1.6, 5.26.1.8

Certificates of insurance

6.1.3

Certificates of testing, inspection, or approval

7.4.4

Change Orders

5.4.2, 5.19.2.3, 5.21, 5.21.1.3, **5.21.2**, 5.21.2.1, 5.21.3.4

Changes in the Work

4.2.3, 4.4.9.1, 5.4.2, 5.21, **5.21.1**, 5.21.1.1, 5.21.1.3, 5.21.2, 5.21.3, 5.21.3.1, 5.21.4, 5.23.3.1.1

Chemical tests

2.3.8

CLAIMS AND DISPUTES

8, 8.1, 8.2, 8.3, 8.4

Claims

5.26.2.3, 5.26.2.4, 5.26.2.5, **8.1**, 8.1.2, 8.1.3, 8.1.4, 8.1.5, 8.1.6, 8.1.7, 8.2

Claims, definition of

8.1.1

Cleaning Up

5.15, 5.20.3

Closeout

5.26, 5.26.1, 5.26.2

Commencement of the Work

2.3.3, 4.6.6, 5.22.2.2, 5.25.2.6, 5.25.2.7, 6.1.3, 6.3.1.2, 8.2.1

COMPANY

2, 2.1, 2.1.1, 2.3, 2.3.4, 4.2.3, 4.6.5, 4.6.7, 5.10.2, 5.19.3, 5.20, 5.23.4.2, 5.24.3.5, 5.26.1.3, 6.2, 7.1.2, 7.7.2.3

Company, Information and Services Required of

2.3

Company Audit Rights

2.2

Company's Budget for the Work

4.2.1, 4.2.4

Company's Liability Insurance

6.2

Company's Right to Carry Out the Work

5.25.2.7

Company's Right to Clean Up

5.20.3

Company's Right to Perform Construction and to Award Separate Contracts

5.20.1

Init.

Company's Right to Stop the Work

5.25.2.6

Completion, final

5.26.2

Completion, Substantial

5.2.25.2, 5.22.1.1, 5.23.4.2, 5.25.2.1, 5.25.2.2.2,
5.26.2.3

Compliance with laws

5.7

Concealed or Unknown Conditions

5.7.4

Conceptualization Phase

4.3

Consent, written

5.14.2, 5.26.2.3, 6.3.1.5, 7.1.1, 8.4.4.2

Consequential Damages, Claims for

8.1.7

Consolidation Or Joinder

8.4.4

Construction

4.2.1, 5.3, 5.10, 5.20.1

Construction by Company or by Separate

Contractors

5.20, 5.20.1, 5.20.2, 5.20.3

Construction Change Directives

1.3.5, 5.4.2, 5.21.1.1, 5.21.1.2, 5.21.1.3, **5.21.3**,
5.21.3.1, 5.23.3.1.1, 5.21.3.2, 5.21.3.3, 5.21.3.4,
5.21.3.5, 5.21.3.6, 5.21.3.9, 5.21.3.10

CONSTRUCTION WORK, CONTRACTOR'S

5, 5.1

Consultants

1.7, 2.2.2, 2.3.10, 5.18.1, 5.22.3.1, 6.1.4, 6.3.7, 7.7.2.2

Contingent Assignment of Subcontracts

5.19.4

Continuing Contract Performance

8.1.4

Contract

1.3.6, 5.19.4.1.1, 6.3.1, 8.1.4

Contract, definition of

1.3.6

Contract Documents

1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.4, 1.4.1, 1.4.3,
1.4.4, 1.4.5, 2.1.2, 2.3.3, 3.1.2, 4.4.6, 4.4.7, 4.4.9,
4.5.5, 4.6.7, 5.1.1, 5.1.2, 5.2.1, 5.2.3, 5.4.1, 5.5, 5.7.5,
5.8.2 5.10.1, 5.10.2

Contract Documents, definition of

1.3.5

Contract Sum Amendment

4.4.3, 4.4.7

CONTRACTOR

2.3.3, 2.3.5, **3**, 3.1, 4.2, 4.2.3, 4.5.4, 5.10, 5.2,
5.20.2.3, 5.23.1, 5.23.1, 5.23.2, 5.23.6.5, 5.7.4,
5.8.2.1, 5.8.2.2, 5.8.2.3, 7.4.1

Contractor's Construction Schedules

5.10

CONTRACTOR'S CONSTRUCTION WORK

2.3.3, 4.6.6, **5**, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9,
5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18,
5.19, 5.20, 5.21, 5.22, 5.22.2.2, 5.23, 5.24, 5.25,
5.25.2.6, 5.25.2.7, 5.26, 6.1.3, 6.3.1.2, 8.2.1

Contractor's Liability Insurance

6.1

CONTRACTOR'S PRECONSTRUCTION WORK

4

Contract Sum

5.19.2.3, 5.21.3.1, 5.21.3.5, 5.21.3.6, 5.21.3.10,
2.23.1, 8.2.5

Contract Sum Amendment

4.4.3, 4.4.7

Contract Time

5.7.4, 5.7.5, 5.10.2, 5.19.2.3, 5.21.2.1.3, 5.21.3.1,
5.21.3.5, 5.21.3.6, 5.21.3.10, 5.21.4, **5.22**, 5.22.2.1,
5.22.2.3, 5.22.3, 5.23.5.1.5, 5.23.7, 5.24.3.2, 5.25.1.1,
8.1.6.1, 8.2.5

Contract Time, definition of

5.22.1

Coordination

1.7

Copyrights and Licenses

7.7, 7.7.1, 7.7.2

Copyrights, Royalties and Patents

5.17

Correction, cost

5.25.1.2, 5.25.2.1, 5.25.2.7

Correction of Work, Uncovering and

5.25.2, 5.25.2.1, 5.25.2.2, 5.25.2.6, 5.25.2.7

Correlation and Intent of the Contract Documents

1.4

Cost

2.2.1, 4.2.1, 4.3.4, 4.4.2, 4.4.7.4, 5.2.4, 5.3.3, 5.8.2,
5.8.2.3, 5.19.4.2, 5.20.1.1, 5.20.3, 5.21.3.3.3, 5.21.3.7,
5.21.3.9, 6.3.1.2, 6.3.1.3, 6.3.4, 7.4.1, 7.4.2, 7.4.3,
7.7.2.2, 7.7.2.3.1, 8.1.6.1

Cost of correction

5.25.1.2, 5.25.2.1, 5.25.2.7

Cost of defense

7.7.2.2

Cost of remediation

5.24.3.6

Cost of uncovering and replacement

5.25.2.1

Costs of the land

4.2.3

Court order

8.3.2

Criteria

2.3.1

Criteria, performance and design

3.1.2

Criteria Design, preparation

4.2.3

Criteria Design Documents

4.4.9, 4.4.5, 4.5.1

Criteria Design Phase

4.4, 4.4.1, 4.4.4

Cutting and Patching

5.14

Damages, recovery

5.22.3.3

Data Exchange Protocols, Software and

1.6

Date of Commencement of the Work

6.1.2

Date of Substantial Completion

5.22.1.2, 5.25.2.2.1, 5.26.1.1, 8.1.2

Day, definition

5.22.1.3

Decisions to Withhold Certification

5.23.5

Defective construction, problem

5.20.2.3

Defective Work

5.23.5.1.1

Defense, cost

7.7.2.2.1

Definitions

1.3

Delay, additional cost

5.24.3.2

Delays and Extensions of Time

5.22.3

Design criteria

3.1.2

Design Phase, Criteria

4.4

Design Phase, Detailed

4.5

Design professional, signature/seal

3.1.2

Destroyed or damaged construction

5.25.2.4

Detailed Design Documents, Company approval

4.5.5

Detailed Design Phase

4.2.3, **4.5**

DISPUTES, CLAIMS AND

6.3.9, 6.3.10, **8**, 8.2.5, 8.2.6.1, 8.3.1, 8.3.2

Documentation, digital form

7.7.1

Documents and Samples at the Site

5.11

Drawings, definition of

1.3.3

Drawings, Specifications and Other Instruments of Service, Use of

1.5

Emergencies

5.24.4

Environmentally responsible design approaches

4.3.1

Equipment

5.21.3.7.3, 5.23.6.4, 5.23.6.5, 7.7.2.2

Estimates

4.2.3, 4.4.2

Failure of Payment

5.23.7

Final Completion and Final Payment

5.26.2

Final inspection

5.26.1.1, 5.26.2.1

Final payment

2.2.2, 5.25.3, 5.26.1.4, 5.26.1.7, 5.26.2, 5.26.2.2,

5.26.2.4, 5.26.2.5, 6.1.2, 6.3.1, 6.3.5

Fire

5.22.3.1, 6.3.1.1, 6.3.3, 6.3.5, 6.3.7

General conditions costs, Contractor

4.2.3

General Consultation Responsibilities

4.2

GENERAL PROVISIONS

1

Goal Achievement Compensation, Contractor's

2.2.1, 5.23.1

Guarantees, (See Warranty)

Hazardous Materials

2.3.7, **5.24.3**

Implementation Documents Phase

4.2.3, **4.6**, 4.6.7

Incentive Compensation

Contractor, 5.23.1

Indemnification

5.18, 5.18.1, 5.18.2, 5.24.3.3, 5.24.3.5, 5.24.3.6,

5.26.1.7, 5.26.2.2, 6.3.7, 7.7.2.2.1, 7.7.2.3.1

Information and Services Required of the

Company

2.3

Initial Decision

8.2

Initial Decision Maker

8.1.3, 8.1.4, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5

Injury or Damage to Person or Property

5.24.8

Inspections

2.3.7, 2.3.8, 5.1.2, 5.3.5, 5.7.1, 5.23.4.2, 5.25.2.1,

5.26.1.1, 5.26.1.3, 5.26.1.5, 5.26.2.1, 7.4, 7.4.1, 7.4.2,

7.4.3, 7.4.5, 7.4.6

Instruments of Service

7.7.1, 7.7.2, 7.7.2.1, 7.7.2.2, 7.7.2.2.1, 7.7.2.3,

7.7.2.3.1, 7.7.2.4

INSURANCE AND BONDS

2.3.9, 5.20.1.1, 5.22.2.2, 5.22.2.2, 5.26.2.2, **6**, 6.1,

6.1.2, 6.2, 6.3, 6.4

Insurance

5.23.3.2, 6.1.3, 6.3.1

Insurance, Loss of

6.3.3

Intent of the Contract Documents

1.4.1

Interest

7.5

Init.

Interpretation

1.4.5

Joinder, Consolidation or 8.4.4

Labor and Materials

5.4, 5.21.3.7

Laws, compliance with

5.7

Legal representative

7.1.1

Liability insurance

1.7, 6.1, 6.1.1.8, 6.2

Licenses, Copyrights and

7.7

Lien

5.26.1.7, 5.26.2.2, 8.2.8

Lien, mechanic

8.2.8

Limitations, statutes of

8.4.1.1

Loss of Insurance

6.3.3

Machinery

5.21.3.7.3, 6.3.2

Materials, Labor and

5.4

Materials, Hazardous

2.3.7, 5.24.3

Materials supplier

4.4.2, 4.5.3, 4.5.4, 4.6.2, 5.23.3.1, 5.23.3.3,
5.23.4.2, 5.23.5.3, 5.23.6.4, 5.23.6.5, 7.7.2.2

Mechanical tests

2.3.8

Mechanic lien

8.2.8

Mediation

8.2.1, 8.2.5, 8.2.6, 8.3, 8.4

Mediator fees

8.3.3

Minor Changes in the Work

5.4.2, 5.21.4

MISCELLANEOUS PROVISIONS

7

Model(s)

1.3.3, 1.3.5, 1.4.2, 1.5.1, 1.6, 4.3.4, 4.5.1, 5.12.1

Modification, definition of

1.3.5, 1.3.6

Modifications to the Contract

6.3.1

Mutual Responsibility

5.20.2

Nonconforming work

5.25.2.2.1, 5.25.3

Notice, written

7.2

Notices

5.7

Occupancy

2.3.5, 5.23.6.6, 5.23.8, 6.3.1.5

On-site inspections

5.23.4.2

Orders, written

1.3.5, 5.21.3.1, 5.21.4

Owner

2.3.3, 4.3.4, 5.11, 5.23.8, 5.23.8.2, 5.23.8.3, 5.26.2.2,

6.1.4, 6.3.1.2, 6.3.1.5, 6.3.2, 6.3.3, 6.3.7, 6.3.8, 6.3.9,

6.3.10, 7.7.2.1, 7.7.2.3, 7.7.2.3.1

Partial Occupancy or Use

5.23.8, 5.23.8.2, 5.23.8.3, 6.3.1.5

Patching, Cutting and

5.14

Payment, Applications for

5.21.3.9, 5.2.3.2, **5.23.3**, 5.23.4, 5.23.7, 5.26.2.5, 6.1.3

Payment, final

5.25.3, 5.26.1.4, 5.26.1.7, 5.26.2, 5.26.2.2, 5.26.2.4,

5.26.2.5, 6.1.2, 6.3.1, 6.3.5, 8.2.1

Payment Bond

5.23.6.7, 6.4

Payments

2.2.2, 2.3.3, 5.21.3.9, **5.23**, 5.23.1, 5.23.3, 5.23.3.1,

5.23.3.1.1, 5.23.3.1.2, 5.23.3.3, 5.23.4, 5.23.4.1,

5.23.4.2, 5.23.5, 5.23.5.1, 5.23.5.1.3, 5.23.5.3, 5.23.6,

5.23.6.1, 5.23.6.2, 5.23.6.6, 5.23.7, 5.23.8, 5.25.1.2,

5.25.2.7, 5.26.1.1, 5.26.1.8, 5.26.2.1, 6.1.3, 6.3.8

Performance Bond and Payment Bond

6.4

Performance criteria

3.1.2

Permits

2.3.5, 5.7, 5.7.1, 7.7.2.2, 8.4.4.1

Permits, Fees, Notices, and Compliance with Laws

5.7

Polychlorinated biphenyl (PCB)

5.24.3.1

PRECONSTRUCTION WORK,

CONTRACTOR'S

4

Product Data and Samples, Shop Drawings

4.6.3, **5.12**

Progress and Completion

5.22.2

Progress Payments

5.23.6

Project, definition of

1.3.2

Project Completion

5.26.1

Property Insurance

5.24.2.5, **6.3**

Protection of Persons and Property

5.24

Purpose (General Provisions)

1.1

Regulations and laws

5.2.3, 5.7.2, 5.7.3, 5.13, 5.24.2.2, 5.24.2.3, 7.4.1

Rejection of Work
5.25.2.1

Related Party Transactions
7.6

Release and waivers of liens
5.26.2.2

Retainage
5.26.1.8

Review of Contract Documents and Field Conditions by Contractor
5.2

Rights and Remedies
7.3

Royalties, Patents and Copyrights
5.17

Rules and notices for arbitration
8.4.1

Safety of Persons and Property
5.24.2

Safety Precautions and Programs
5.24.1

Samples
5.1.1, 5.1.2, 5.10.2, 5.12.3, 5.12.4, 5.12.5, 5.12.6, 5.12.7, 5.12.9

Schedule of Values
5.23.2

Separate Contractors, Construction by Company or by
5.20

Separate contracts, award
5.20.1.2

Shop Drawings, Product Data and Samples
5.12

Site inspections
5.23.4.2

Site, Use of
5.13

Software and Data Exchange Protocols
1.6

Specifications
1.3.5, 1.4.2, 1.5, 5.17

Specifications, definition of
1.3.4

Statute of limitations
8.4.1.1

Subcontractors
5.19, 5.19.1, 5.19.2, 5.19.3, 5.19.4

Subcontractors, definition of
5.19.1.1

Subcontracts
5.19.2, 5.19.4

Subcontractual Relations
5.19.3

Submittals
3.1.2, 5.10.2, 5.11, 5.12.4, 5.12.5, 5.12.6, 5.12.7, 5.12.8, 5.12.9, 5.23.3.3, 6.5

Submittal schedules
5.10.2, 5.12.5

Subrogation, waivers
6.3.5, 6.3.7

Substantial Completion,
4.4.7.5, 5.2.25.2, 5.22.1.1, 5.22.1.2, 5.22.2.1, 5.22.2.3, 5.23.4.2, 5.25.2.1, 5.25.2.2.1, 5.25.2.2.2, 5.26.1.1, 5.26.1.2, 5.26.1.5, 5.26.1.6, 5.26.2.3, 8.1.2

Substitutions of Materials
4.6.3, 5.4.2, 5.19.2.4, 5.21.3.8

Sub-subcontractors
1.5, 5.23.6.2

Subsurface Conditions
5.7.4

Successors and Assigns
7.1

Superintendent
5.9

Supervision and Construction Procedures
5.3

Supervision personnel, additional cost
5.21.3.7, 5.21.3.7.5

Surety
5.19.4.1.2, 5.26.1.7, 5.26.1.8, 5.26.2.2, 5.26.2.3, 8.2.7

Surveys
2.3.6

Target Cost Amendment
4.3.2

Taxes
5.6, 5.8.2.1, 5.21.3.7.4

Termination of the Contract
5.19.4.1.1

Test pits
2.3.7

Tests and Inspections
2.3.7, 2.3.8, 5.1.2, 5.23.4.2, **7.4**, 7.4.1, 7.4.2, 7.4.5, 7.4.6

Time
5.22, 5.22.1, 5.22.2, 5.22.3

Time Limits on Claims
8.1.2

Trade discounts
5.8.2.1

Transportation cost
5.21.3.7.2

Uncovering and Correction of Work
5.25, 5.25.1, 5.25.2, 5.25.2.1, 5.25.2.2, 5.25.2.6, 5.25.2.7, 5.25.3

Unemployment insurance
5.21.3.7.1

Unknown Conditions
5.7.4

Use of Drawings, Specifications and Other Instruments of Service
1.5

Use of Site
5.13

Values, schedule
5.23.2

Waivers of Claims
5.26.2.3, 5.26.2.4, 5.26.2.5

Waivers of Liens

5.26.1.7, 5.26.2.2

Waivers of Subrogation

6.3.5, **6.3.7**

Warranty

5.5, 5.23.8.1, 5.25.2.2.1

Weather delays

8.1.6.2

Work

1.3.1, 4.2.1, 4.2.3, 4.2.4, 4.3.4, 4.5.1, 5.16, 5.19.2,
5.21, 5.21.1, 5.21.4, 5.23.5.1.1, 5.25, 5.25.1, 5.25.2,
5.25.2.1, 5.25.2.2, 5.25.2.6, 5.25.2.7, 5.3.3, 5.4.2,
6.1.2, 7.4.1

Work, definition of

1.3.1

Workers' compensation insurance

5.21.3.7.1

Workplan

4.3.2

Written approval

3.1.2, 7.6.2

Written consent

1.5, 5.14.2, 5.26.2.3, 6.3.1.5, 7.1.1, 8.4.4.2

Written Notice

7.2

Written order

1.3.5, 5.21.3.1, 5.21.4, 5.25.2.6

Sample

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS
- A.2 COMPANY
- A.3 CONTRACTOR
- A.4 CONTRACTOR'S PRECONSTRUCTION WORK
- A.5 CONTRACTOR'S CONSTRUCTION WORK
- A.6 INSURANCE AND BONDS
- A.7 MISCELLANEOUS PROVISIONS
- A.8 CLAIMS AND DISPUTES

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 Purpose

The Company and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery and to utilize Building Information Modeling to maximize the use of their knowledge, skills, and services for the benefit of the Project.

§ A.1.2 The Contractor accepts the relationship of trust and confidence established by the Company-Contractor Agreement and covenants with the Company to cooperate with the Company and exercise the Contractor's skill and judgment in furthering the interests of the Company; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform its services in an expeditious and economical manner consistent with the Company's interests.

§ A.1.3 Basic Definitions

§ A.1.3.1 The Work

The term "Work" means the construction and services required of the Contractor by the Contract Documents for This Portion of the Project, 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.

§ A.1.3.2 The Project

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

§ A.1.3.3 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 Models, plans, elevations, sections, details, schedules and diagrams.

§ A.1.3.4 The Specifications

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

§ A.1.3.5 The Contract Documents

The Contract Documents consist of the agreement between the Company and Contractor (Company-Contractor Agreement), General, Supplementary and other Conditions of the Contract (Conditions of the Contract), Models, Drawings, Specifications, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ A.1.3.6 The Contract

The Contract Documents together with the documents in Article 10 of the Company-Contractor Agreement, comprise the agreement between the Company and Contractor for Integrated Project Delivery. The Contract represents the

entire and integrated agreement between the Company and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Owner, Architect, Construction Manager or any Non-Owner Member or their consultants and contractors; (2) between the Company and any of the Contractor's Subcontractors or Sub-subcontractors; or (3) between any persons or entities other than the Company and the Contractor.

§ A.1.4 Correlation and Intent of the Contract Documents

§ A.1.4.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of This Portion of the Project 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.1.4.2 Neither organization of the Specifications into divisions, sections and articles, arrangement of Drawings, organization of the Model, or the issuance of separate Models shall control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ A.1.4.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ A.1.4.4 Capitalization

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

§ A.1.4.5 Interpretation

In the interest of brevity, words such as "all" and "any" and articles such as "the" and "an" may be omitted, 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 Use of Drawings, Specifications and Other Instruments of Service

The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized, solely and exclusively for use in completion of the Project, to use and reproduce the Instruments of Service provided to them. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use another author's Instruments of Service on other projects or for additions to this Project without the specific written consent of the Company and the author of the Instruments of Service.

§ A.1.5.1 The Company and Contractor shall utilize Models as Instruments of Service to the greatest extent practicable. Unless the parties mutually agree otherwise, the Company shall be responsible for the integration and coordination of the Model throughout the design and construction of the Project.

§ A.1.6 Software and Data Exchange Protocols

The Company and Contractor shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. The Company and Contractor shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determinations shall be set forth in AIA Document E201™-2007 and AIA Document E202™-2008, or similar documents, that shall be incorporated by reference into all agreements for services or construction for the Project.

§ A.1.7 Coordination

The Company and Contractor shall each coordinate the services of their own contractors, consultants and subcontractors with those provided by the other party. Upon request, the Company and Contractor shall each furnish the other copies of the scopes of services in the contracts with their respective contractors, consultants and subcontractors. The Company and Contractor shall each require their respective contractors, consultants and subcontractors to maintain professional liability insurance and other liability insurance, as appropriate to the services provided.

ARTICLE A.2 COMPANY

§ A.2.1 General

§ A.2.1.1 The Company is the entity identified as such in this document and is referred to as if singular in number. The Company shall designate in writing a representative who shall have express authority to bind the Company with respect to all matters requiring the Company's approval or authorization. The term "Company" means the Company or the Company's authorized representative.

§ A.2.1.2 The Company shall furnish information or services required of the Company by the Company-Contractor Agreement, the SPE Agreement, and the Contract Documents in a timely manner. The Company shall also furnish any other information or services under the Company's control and relevant to the Contractor's performance with reasonable promptness after receiving the written request for such information or services.

§ A.2.1.3 The Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Company.

§ A.2.1.4 The Company shall provide prompt written notice to the Contractor if the Company becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

§ A.2.1.5 The Company shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant 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.2.2 Company Audit Rights

§ A.2.2.1 If any portion of the Contractor's compensation for Work performed, Incentive Compensation, Goal Achievement Compensation, or reimbursement of expenses is determined on a cost reimbursement basis, then the Company shall have the audit rights set forth in Section A.2.2.2.

§ A.2.2.2 The Contractor shall keep full and detailed records and accounts related to its services and exercise such controls as may be necessary for proper financial management under the Company-Contractor Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Company. The Company and the Company's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, consultant or contractor proposals, purchase orders, vouchers, memoranda and other data relating to the Company-Contractor Agreement. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.2.3 Information and Services Required of the Company

§ A.2.3.1 The Company shall provide information regarding requirements for and limitations on the Project, including a written program which shall set forth the Company's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ A.2.3.2 The Company shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Contractor's performance of its services.

§ A.2.3.3 Prior to commencement of the Contractor's Construction Work, the Contractor may request in writing that the Company provide reasonable evidence that the Company through the Owner has made financial arrangements to fulfill the Company's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Company fails to make payments to the Contractor as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Contractor identifies in writing a reasonable concern regarding the Company's ability to make payment when due. The Company shall furnish such evidence as a condition precedent to commencement or continuation of the Contractor's Construction Work or the portion of the Work affected by a material change. After the Company furnishes the evidence, the Company shall not materially vary such financial arrangements without prior notice to the Contractor and Architect.

§ A.2.3.4 The Company shall establish and periodically update the Company's budget for the Project, including (1) the budget for the This Portion of the Project (Budget for the Work), (2) the Company's other costs, and (3) reasonable

contingencies related to all of these costs. If the Company significantly increases or decreases the Company's Budget for the Work, the Company shall notify the Contractor.

§ A.2.3.5 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section A.5.7.1, the Company shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ A.2.3.6 The Company shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect 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.2.3.7 The Company shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ A.2.3.8 The Company shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ A.2.3.9 The Company shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Company's needs and interests.

§ A.2.3.10 Where required by applicable law, the Company shall require that any consultants or contractors providing services to the Company shall be licensed as may be required by applicable law to perform such services in the jurisdiction where the Project is located.

ARTICLE A.3 CONTRACTOR

§ A.3.1 General

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

§ A.3.1.2 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Company will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Company. The Company shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Company has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section A.3.1.2, the Company will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

ARTICLE A.4 CONTRACTOR'S PRECONSTRUCTION WORK

§ A.4.1 The Contractor shall only be required to perform Preconstruction Work if required under the Company-Contractor Agreement.

§ A.4.2 General Consultation Responsibilities

§ A.4.2.1 Throughout the development of the Contract Documents, the Contractor shall advise the Company on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide recommendations on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, the Company's Budget for the Work, and possible cost reductions.

§ A.4.2.2 The Contractor shall assist the Company in connection with the Company's responsibility for obtaining approval for the Work from governmental authorities having jurisdiction over the Project.

§ A.4.2.3 The Contractor shall provide estimating services throughout the design of the Project as specifically required in this Article A.4, and at other various times agreed to by the Company and Contractor. The Contractor shall provide estimates of the total cost to the Company to construct all elements of This Portion of the Project and shall include contractors' general conditions costs, overhead and profit (Contractor's Estimate). The Contractor's Estimate shall not include Pre-Target Cost compensation, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Company. The Contractor's Estimates shall increase in detail and refinement as the Company progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents.

§ A.4.2.3.1 In preparing the Contractor's Estimates, the Contractor shall include and itemize contingencies for design, procurement, and reasonable price escalation. The Contractor's Estimate shall be based on current area, volume or similar conceptual estimating techniques.

§ A.4.2.4 For each of the Contractor's Estimates, the Contractor shall provide adequate detail to support the estimate. The Contractor shall submit its estimates for the Company's review and acceptance. The Contractor shall advise the Company if it appears that any of the Contractor's Estimates may exceed the Company's Budget for the Work and, in consultation with the Company, make recommendations for corrective action.

§ A.4.2.5 The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Contract Sum.

§ A.4.3 Conceptualization Phase

§ A.4.3.1 The Company and Contractor shall review the program furnished by the Company to ascertain the requirements of This Portion of the Project, and shall arrive at a mutual understanding of those requirements. The Company and Contractor shall discuss possible alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Company shall reach an understanding with the Contractor regarding the requirements of This Portion of the Project.

§ A.4.3.2 The Contractor shall prepare and periodically update a Project schedule in collaboration with the Company. The Project schedule shall coordinate and integrate the Contractor's Preconstruction Work with the services described in Article D.2 of the Workplan and the Target Cost Amendment, including the Integrated Scope of Services matrix, and identify items that could affect the Project's timely completion.

§ A.4.3.3 Once the Company and Contractor agree to the time limits established by the Project schedule, neither the Company nor Contractor shall exceed them, except for reasonable cause.

§ A.4.3.4 The Contractor shall provide a preliminary evaluation of the Owner's program and the Budget for the Work, each in terms of the other and recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall take into consideration cost information, constructability, and procurement and construction scheduling issues. To the extent possible, the information shall be integrated into the Model.

§ A.4.4 Criteria Design Phase

§ A.4.4.1 During the Criteria Design Phase, the Contractor shall meet with the Company as appropriate to the progress of the design to review the Criteria Design Documents as necessary.

§ A.4.4.2 The Contractor shall obtain information from Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

§ A.4.4.3 The Contractor, for the Company's review and acceptance, shall prepare a procurement schedule for items that must be ordered well in advance of construction. If the Company agrees to procure any items prior to the execution of the Contract Sum Amendment, the Company shall procure the items on terms and conditions acceptable to the Contractor. Upon execution of the Contract Sum Amendment, the Company shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ A.4.4.4 At the conclusion of the Criteria Design Phase, the Company and Contractor shall meet to review the Criteria Design Documents.

§ A.4.4.5 Upon the Company's acceptance of the Criteria Design Documents, the Contractor shall prepare a Contract Sum proposal based on the method for calculating the Contract Sum selected in Section 4.1 of the Company-Contractor Agreement for the Company's review and acceptance.

§ A.4.4.6 To the extent that the Contract Documents are anticipated to require further development in the Detailed Design Phase and the Implementation Documents Phase, the Contractor shall provide in the Contract Sum proposal for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ A.4.4.7 The Contractor shall include with the Contract Sum proposal a written statement of its basis, which shall include the following:

- .1 A complete list of the documents and information used in preparation of the Contract Sum proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the Contractor's clarifications, exclusions, and assumptions, if any, with regard to the Contract Documents and information relied upon in preparation of the Contract Sum proposal.
- .4 The proposed Contract Sum, including a statement of the estimated cost organized by trade categories, allowances, contingencies, the Contractor's Fee, and other items that comprise the Contract Sum.
- .5 The anticipated date of Substantial Completion upon which the Contract Sum proposal is based, and a schedule for the issuance dates of the Implementation Documents upon which the anticipated Substantial Completion date relies.

§ A.4.4.8 The Contractor shall meet with the Company to review the Contract Sum proposal. In the event that the Company discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Contractor, who shall make appropriate adjustments to the Contract Sum proposal, its basis, or both.

§ A.4.4.9 Once accepted by the Company, the Contract Sum, including the written statement required under Section A.4.4.7 as appropriate, shall be set forth in Exhibit B, Contract Sum Amendment. Upon the Company's acceptance of the Contract Sum proposal, the Criteria Design Documents upon which the approved Contract Sum is based shall become part of the Contract Documents.

§ A.4.4.9.1 Adjustments to the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Section A.5.21.3.3.

§ A.4.5 Detailed Design Phase

§ A.4.5.1 Based on the Company's approval of the Criteria Design Documents, as well as any adjustments in the Project requirements and the Budget for the Work, the Company shall provide Detailed Design Documents that shall illustrate and describe the development of the approved Criteria Design Documents and shall consist of drawings, other documents and the Model. If required by the Contractor's scope of services, the Contractor shall assist the Company in the preparation of the Detailed Design documents.

§ A.4.5.2 During the Detailed Design Phase, the Company shall meet with the Contractor as appropriate and necessary to the progress of the design to review the Detailed Design Documents.

§ A.4.5.3 Prior to the conclusion of the Detailed Design Phase, the Contractor shall furnish to the Company a list of possible Subcontractors and material suppliers.

§ A.4.5.4 The Contractor shall provide updates to the Contractor's cost information and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from Subcontractors and material suppliers pursuant to Section A.4.5.3. The Contractor shall require any such Subcontractors and material suppliers to provide additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

§ A.4.5.5 At the conclusion of the Detailed Design Phase, the Company and Contractor shall meet to review the Detailed Design Documents. Upon the Company's approval of the Detailed Design Documents, they shall become part of the Contract Documents and shall take priority over the Criteria Design Documents.

§ A.4.6 Implementation Documents Phase

§ A.4.6.1 Based on the Detailed Design Documents and the Contract Sum, including any adjustments approved by the Company, the Company and Contractor shall prepare Implementation Documents. The Implementation Documents shall illustrate and describe the further development of the approved Detailed Design Documents and shall set forth in detail the requirements for the construction of the Work.

§ A.4.6.2 The Contractor shall coordinate with Subcontractors and material suppliers to obtain finalized cost information and schedules for their scopes of work and to ensure that the Implementation Documents include sufficient and unambiguous information for completion of the Work.

§ A.4.6.3 During preparation of the Implementation Documents, the Company shall consider the Contractor's recommendations for substitutions and shall incorporate accepted information, as well as cost or product data, into the Implementation Documents.

§ A.4.6.4 The Company and the Contractor shall incorporate into the Implementation Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ A.4.6.5 Pursuant to a schedule to which the Company and Contractor agree, the Contractor shall provide Shop Drawings and other submittals for the Company's review and approval, and incorporation into the Implementation Documents. The review of such submittals shall be made pursuant to Section A.5.12.

§ A.4.6.6 The Company and the Contractor shall agree, in writing, on the commencement date for the Contractor's Construction Work. If the Company and Contractor agree, the Contractor may begin construction of the Work during the Implementation Documents Phase, as appropriate.

§ A.4.6.7 At the conclusion of the Implementation Documents Phase, the Company and Contractor shall meet to review the Implementation Documents. Upon the Company's approval of the Implementation Documents, they shall become part of the Contract Documents and shall take priority over the Detailed Design Documents and shall take precedence over any conflicting requirements within the Contract Documents.

ARTICLE A.5 CONTRACTOR'S CONSTRUCTION WORK

§ A.5.1 General Provisions

§ A.5.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.

§ A.5.1.2 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 Company in the Company's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ A.5.2 Review of Contract Documents and Field Conditions by Contractor

§ A.5.2.1 The Contractor shall visit the site and become generally familiar with local conditions under which the Work is to be performed and correlate personal observations with requirements of the Contract Documents.

§ A.5.2.2 The Contractor shall, before starting construction of each portion of the Work, carefully study and compare the various documents relative to that portion of the Work, as well as the information furnished by the Company pursuant to Section A.2.3.6, 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. The Contractor shall promptly report to the Company

any inconsistencies or deviations discovered by or made known to the Contractor as a request for information in such form as the Company may require.

§ A.5.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, except to the extent such responsibility is included in the Contractor's scope of Work, but the Contractor shall promptly report to the Company and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Company may require.

§ A.5.2.4 If the Contractor performs Preconstruction Work, the Company shall not be liable to the Contractor for damages resulting from errors, inconsistencies or omissions the Contractor reports pursuant to Section A.5.2.2. However, if the Contractor believes that additional cost or time is involved because of clarifications or instructions the Company issues in response to the Contractor's requests for information pursuant to Section A.5.2.3, the Contractor shall make Claims as provided in Article A.8. If the Contractor fails to perform the obligations of either Sections A.5.2.2 or A.5.2.3, the Contractor shall pay such costs and damages to the Company as would have been avoided if the Contractor had performed such obligations.

§ A.5.3 Supervision and Construction Procedures

§ A.5.3.1 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. The Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ A.5.3.2 The Contractor shall provide monthly written reports to the Company on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Company may reasonably require. The log shall be available to the Company.

§ A.5.3.3 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Company at regular intervals.

§ A.5.3.4 The Contractor shall be responsible to the Company 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.5.3.5 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.5.4 Labor and Materials

§ A.5.4.1 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.5.4.2 Except in the case of minor changes in the Work authorized by the Company in accordance with Section A.5.21.4, the Contractor may make substitutions only with the consent of the Company, and in accordance with a Change Order or Construction Change Directive.

§ A.5.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ A.5.5 Warranty

The Contractor warrants to the Company that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not

conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Company, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.5.6 Taxes

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

§ A.5.7 Permits, Fees, Notices, and Compliance with Laws

§ A.5.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ A.5.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ A.5.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ A.5.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions that differ materially from those upon which the parties relied in the development of the Contract Documents, the Contractor shall promptly provide notice to the Company before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Company will promptly investigate such conditions and, if the Company determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Company 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 Company shall promptly notify the Contractor in writing, stating the reasons. If either party disputes the Company's determination or recommendation, that party may proceed as provided in Article A.8.

§ A.5.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Company. Upon receipt of such notice, the Company shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Company but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article A.8.

§ A.5.8 Allowances

§ A.5.8.1 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 Company may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ A.5.8.2 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.5.8.2.1 and (2) changes in Contractor's costs under Section A.5.8.2.2.

§ A.5.8.3 Materials and equipment under an allowance shall be selected by the Company with reasonable promptness.

§ A.5.9 Superintendent

§ A.5.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ A.5.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Company the name and qualifications of a proposed superintendent. The Company may reply within 14 days to the Contractor in writing stating (1) whether the Company has reasonable objection to the proposed superintendent or (2) that the Company requires additional time to review. Failure of the Company to reply within the 14 day period shall constitute notice of no reasonable objection.

§ A.5.9.3 The Contractor shall not employ a proposed superintendent to whom the Company has made reasonable and timely objection. The Contractor shall not change the superintendent without the Company's consent, which shall not unreasonably be withheld or delayed.

§ A.5.10 Contractor's Construction Schedules

§ A.5.10.1 The Contractor shall submit for the Company's information a Contractor's construction schedule for This Portion of the Project. 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.5.10.2 If the Contract Documents require submittals during the Construction Phase, the Contractor shall prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Company's approval. The Company's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Company reasonable time to review submittals. If the Contract Documents require that the Contractor provide a submittal schedule and the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Shop Drawings, Product Data, Samples and similar submittals required during the Construction Phase are not Contract Documents.

§ A.5.10.3 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Company.

§ A.5.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Company one copy of the Contract Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved submittals provided during construction. These shall be available to the Company and shall be delivered to the Company for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ A.5.12 Shop Drawings, Product Data and Samples

§ A.5.12.1 Shop Drawings are drawings, diagrams, models, 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.5.12.2 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.5.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.5.12.4 The purpose of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Company is subject to the limitations of Section A.3.1.2. Informational submittals upon which the Company is not

expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Company without action.

§ A.5.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Company Shop Drawings, Product Data, Samples and similar submittals in accordance with the submittal schedule approved by the Company or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Company or of separate contractors.

§ A.5.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Company that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals as consistent with the requirements of the Work and the Contract Documents.

§ A.5.12.7 The Contractor shall perform no portion of the Work that requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Company.

§ A.5.12.8 The Work shall be in accordance with approved submittals.

§ A.5.12.9 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 Company on previous submittals. In the absence of such written notice, the Company's approval of a resubmission shall not apply to such revisions.

§ A.5.13 Use of Site

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

§ A.5.14 Cutting and Patching

§ A.5.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ A.5.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Company 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 Company or a separate contractor except with written consent of the Company and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Company or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ A.5.15 Cleaning Up

§ A.5.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ A.5.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Company may do so and the Company shall be entitled to reimbursement from the Contractor.

§ A.5.16 Access to Work

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

§ A.5.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Company 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 Company. 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 Company.

§ A.5.18 Indemnification

§ A.5.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Company, the Company's Members, the Company's and the Company's Members' consultants and contractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.5.18.

§ A.5.18.2 In claims against any person or entity indemnified under this Section A.5.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.5.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ A.5.19 Subcontractors

§ A.5.19.1 Definitions

§ A.5.19.1.1 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.5.19.1.2 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.5.19.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ A.5.19.2.1 Unless otherwise stated in the Contract Documents the Contractor, as soon as practicable after execution of the Contract, shall furnish in writing to the Company 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 Company may reply within 14 days to the Contractor in writing stating (1) whether the Company has reasonable objection to any such proposed person or entity or (2) that additional time is required for review. Failure of the Company to reply within the 14-day period shall constitute notice of no reasonable objection.

§ A.5.19.2.2 The Contractor shall not contract with a proposed person or entity to whom the Company 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.5.19.2.3 If the Company has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Company 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.5.19.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Company makes reasonable objection to such substitution.

§ A.5.19.3 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 the Contract Documents, assumes toward the Company. Each subcontract agreement shall preserve and protect the rights of the Company 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 Company. 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 and other documents to which the Subcontractor will be bound.

§ A.5.19.4 Contingent Assignment of Subcontracts

§ A.5.19.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Company, provided that

- .1 assignment is effective only after termination of the Contract by the Company for cause pursuant to Section 8.2.2 of the Company-Contractor Agreement and only for those subcontract agreements that the Company accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ A.5.19.4.2 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.

§ A.5.19.4.3 Upon such assignment to the Company under this Section A.5.19.4, the Company may further assign the subcontract to a successor contractor or other entity. If the Company assigns the subcontract to a successor contractor or other entity, the Company shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ A.5.20 Construction by Company or by Separate Contractors

§ A.5.20.1 Company's Right to Perform Construction and to Award Separate Contracts

§ A.5.20.1.1 The Company reserves the right to perform construction or operations related to the Project with the Company's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Company, the Contractor shall make such Claim as provided in Article A.8.

§ A.5.20.1.2 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 contract.

§ A.5.20.1.3 The Company shall provide for coordination of the activities of the Company'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 Company in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Company until subsequently revised.

§ A.5.20.1.4 Unless otherwise provided in the Contract Documents, when the Company performs construction or operations related to the Project with the Company's own forces, the Company shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Contract.

§ A.5.20.2 Mutual Responsibility

§ A.5.20.2.1 The Contractor shall afford the Company 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.5.20.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Company or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Company apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Company'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.5.20.2.3 The Contractor shall reimburse the Company for costs the Company incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Company shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ A.5.20.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Company or separate contractors as provided in Section A.5.24.2.5.

§ A.5.20.2.5 The Company and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section A.5.14.

§ A.5.20.3 Company's Right to Clean Up

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

§ A.5.21 Changes in the Work

§ A.5.21.1 General

§ A.5.21.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Section A.5.21 and elsewhere in the Contract Documents.

§ A.5.21.1.2 A Change Order shall be based upon agreement among the Company and Contractor; a Construction Change Directive requires agreement by the Company and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Company alone.

§ A.5.21.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ A.5.21.2 Change Orders

§ A.5.21.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Company, Contractor and Architect stating their agreement upon all of the following:

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

§ A.5.21.3 Construction Change Directives

§ A.5.21.3.1 A Construction Change Directive is a written order prepared by and signed by the Company, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Company 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.5.21.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.5.21.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section A.5.21.3.7.

§ A.5.21.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Company or Contractor, the applicable unit prices shall be equitably adjusted.

§ A.5.21.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.5.21.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.5.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Company-Contractor Agreement, or if no such amount is set forth in the Company-Contractor Agreement, a reasonable amount. In such case, and also under Section A.5.21.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section A.5.21.3.7 shall be limited to the following:

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

§ A.5.21.3.8 The amount of credit to be allowed by the Contractor to the Company for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Company. 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.5.21.3.9 Pending final determination of the total cost of a Construction Change Directive to the Company, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Company will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Company determines to be reasonably justified. The Company's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article A.8.

§ A.5.21.3.10 When the Company and Contractor agree with a determination made by the Company concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Company will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ A.5.21.4 Minor Changes in the Work

The Company has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Prior to issuing a Minor Change, the Company shall notify the Contractor of the nature, extent and anticipated time of issuance of the proposed directive. The Company and Contractor shall make adjustments to the Contract Documents to reflect the

proposed directive for the review of the Company and Contractor. The Contractor should determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised Contract Documents and provide appropriate recommendations to the Company. Such changes will be effected by written order signed by the Company and shall be binding on the Company and Contractor.

§ A.5.22 Time

§ A.5.22.1 Definitions

§ A.5.22.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work after commencement of the Construction Phase.

§ A.5.22.1.2 The date of Substantial Completion is the date certified by the Company in accordance with Section A.5.26.1.

§ A.5.22.1.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ A.5.22.2 Progress and Completion

§ A.5.22.2.1 Time limits stated in the Contract Documents for the Substantial Completion of the Work are of the essence of the Contract. By executing the GMP Amendment the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ A.5.22.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Company in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article A.6 to be furnished by the Contractor and Company. The date of commencement of the Contractor's Construction Work shall not be changed by the effective date of such insurance.

§ A.5.22.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.5.22.3 Delays and Extensions of Time

§ A.5.22.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Company, or of an employee of the Company, or of a separate consultant or contractor employed by the Company; 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 Company pending dispute resolution; or by other causes that the Company determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Company may determine.

§ A.5.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article A.8.

§ A.5.22.3.3 This Section A.5.22.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ A.5.23 Payments

§ A.5.23.1 Contract Sum

The Contract Sum plus any Contractor Goal Achievement Compensation and Contractor Incentive Compensation awarded is the total amount payable by the Company to the Contractor for performance of the Work under the Contract Documents.

§ A.5.23.2 Schedule of Values

The Contractor shall submit to the Company, before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Company may require. This schedule, unless objected to by the Company, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ A.5.23.3 Applications for Payment

§ A.5.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the person or persons designated by the Company an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section A.5.23.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Company or

its designees may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ A.5.23.3.1.1 As provided in Section A.5.21.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Company or its authorized designee, but not yet included in Change Orders.

§ A.5.23.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ A.5.23.3.2 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 Company, 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 Company to establish the Company's title to such materials and equipment or otherwise protect the Company's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.5.23.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Company 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 Company 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.5.23.4 Certificates for Payment

§ A.5.23.4.1 The Company will, within seven days after receipt of the Contractor's Application for Payment, forward to the Contractor a Certificate for Payment for such amount determined to be properly due, or notify the Contractor in writing of the Company's reasons for withholding payment in whole or in part as provided in Section A.5.23.5.1.

§ A.5.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Company that, to the best of the Company's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Company to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ A.5.23.4.3 The Company shall maintain a record of the Applications and Certificates for Payment.

§ A.5.23.5 Decisions to Withhold Certification

§ A.5.23.5.1 The Company may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Company, if in the Company's opinion the representations by the Company required by Section A.5.23.4.2 cannot be made. If the Company is unable to acknowledge payment in the amount of the Application, the Company will notify the Contractor as provided in Section A.5.23.4.1. If the Contractor and Company cannot agree on a revised amount, the Company will promptly issue a Certificate for Payment for the amount for which the Company is able to make such representations. The Company may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Company's opinion to protect the Company

from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section A.5.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Company is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 damage to the Company or a separate contractor;
- .5 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
- .6 repeated failure to carry out the Work in accordance with the Contract Documents.

§ A.5.23.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ A.5.23.5.3 If the Company withholds certification for payment under Section A.5.23.5.1.3, the Company may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Company makes payments by joint check, the Company shall reflect such payment on the next Certificate for Payment.

§ A.5.23.6 Progress Payments

§ A.5.23.6.1 After the Company has issued a Certificate for Payment, the Company shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Contractor.

§ A.5.23.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Company the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ A.5.23.6.3 The Company will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Company on account of portions of the Work done by such Subcontractor.

§ A.5.23.6.4 The Company has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Company to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Company shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Company shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ A.5.23.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections A.5.23.6.2, A.5.23.6.3 and A.5.23.6.4.

§ A.5.23.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Company shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ A.5.23.6.7 Unless the Contractor provides the Company 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 Company. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ A.5.23.7 Failure of Payment

If the Company does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Company does not pay the Contractor within seven days after the date established in the Contract Documents the amount acknowledged by the Company or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Company, stop

the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ A.5.23.8 Partial Occupancy or Use

§ A.5.23.8.1 The Company may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section A.6.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Company and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Company as provided under Section A.5.26.1.4. 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 Company and Contractor.

§ A.5.23.8.2 Immediately prior to such partial occupancy or use, the Company and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ A.5.23.8.3 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.5.24 Protection of Persons and Property

§ A.5.24.1 Safety Precautions and Programs

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

§ A.5.24.2 Safety of Persons and Property

§ A.5.24.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

§ A.5.24.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.5.24.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.5.24.2.4 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.5.24.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections A.5.24.2.1.2 and A.5.24.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections A.5.24.2.1.2 and A.5.24.2.1.3, except damage or loss attributable to acts or omissions of the Company or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section A.5.18.

§ A.5.24.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Company.

§ A.5.24.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ A.5.24.2.8 Injury or Damage to Person or Property

If Company or Contractor 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.5.24.3 Hazardous Materials

§ A.5.24.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Company in writing.

§ A.5.24.3.2 Upon receipt of the Contractor's written notice, the Company shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Company 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 Company in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Company. If the Contractor has an objection to a person or entity proposed by the Company, the Company 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 Company and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ A.5.24.3.3 To the fullest extent permitted by law, the Company shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section A.5.24.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ A.5.24.3.4 The Company shall not be responsible under this Section A.5.24.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Company shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ A.5.24.3.5 The Contractor shall indemnify the Company for the cost and expense the Company incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section A.5.24.3.1, except to the extent that the cost and expense are due to the Company's fault or negligence.

§ A.5.24.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Company shall indemnify the Contractor for all cost and expense thereby incurred.

§ A.5.24.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article A.8 and Section A.5.21.

§ A.5.25 Uncovering and Correction of Work

§ A.5.25.1 Uncovering of Work

§ A.5.25.1.1 If a portion of the Work is covered contrary to the Company's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Company, be uncovered for the Company's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ A.5.25.1.2 If a portion of the Work has been covered that the Company has not specifically requested to examine prior to its being covered, the Company 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 Company's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Company or a separate contractor in which event the Company shall be responsible for payment of such costs.

§ A.5.25.2 Correction of Work

§ A.5.25.2.1 Before or After Substantial Completion

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

§ A.5.25.2.2 After Substantial Completion

§ A.5.25.2.2.1 In addition to the Contractor's obligations under Section A.5.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section A.5.23.8.1, 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 Company to do so unless the Company has previously given the Contractor a written acceptance of such condition. The Company shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Company fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Company 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 Company, the Company may correct it in accordance with Section A.5.25.2.7.

§ A.5.25.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ A.5.25.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section A.5.25.2.

§ A.5.25.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Company.

§ A.5.25.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Company or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ A.5.25.2.5 Nothing contained in this Section A.5.25.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section A.5.25.2.2 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.5.25.2.6 Company's Right to Stop the Work

Upon commencement of the Contractor's Construction Work, if the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section A.5.25.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Company 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 Company to stop the Work shall not give rise to a duty on the part of the Company to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section A.5.20.1.3.

§ A.5.25.2.7 Company's Right to Carry Out the Work

Upon commencement of the Contractor's Construction Work, if the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Company to commence and continue correction of such default or neglect with diligence and promptness, the Company may, without prejudice to other remedies the Company may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Company's expenses resulting from such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Company.

§ A.5.25.3 Acceptance of Nonconforming Work

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

§ A.5.26 Closeout

§ A.5.26.1 Project Completion

§ A.5.26.1.1 The Company shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor for the Company's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ A.5.26.1.2 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Company can occupy or utilize the Work for its intended use.

§ A.5.26.1.3 The Company's inspections shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ A.5.26.1.4 When the Contractor considers that the Work, or a portion thereof which the Company agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Company 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.5.26.1.5 Upon receipt of the Contractor's list, the Company will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Company's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Company can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Company. In such case, the Contractor shall then submit a request for another inspection by the Company to determine Substantial Completion.

§ A.5.26.1.6 When the Work or designated portion thereof is substantially complete, the Company will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Company and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall inform the Company about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ A.5.26.1.7 The Contractor shall provide to the Company the following information: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Company against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ A.5.26.1.8 The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of responsibilities assigned in such Certificate. Upon such acceptance and consent of surety, if any, the Company shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ A.5.26.2 Final Completion and Final Payment

§ A.5.26.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Certificate for Payment, the Company will promptly make such inspection and, when the Company finds the Work acceptable under the Contract Documents and the Contract fully performed, the Company will promptly issue a final Certificate for Payment stating that to the best of the Company's knowledge, information and belief, and on the basis of on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Company's final Certificate for Payment will constitute a further representation that conditions listed in Section A.5.26.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ A.5.26.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Company (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Company or the Owner's property might be responsible or encumbered (less amounts withheld by Company) 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 Company; (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 Company, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Company. If a Subcontractor refuses to furnish a release or waiver required by the Company, the Contractor may furnish a bond satisfactory to the Company to indemnify the Company and Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Company all money that the Company or Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ A.5.26.2.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Company shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor prior to such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.5.26.2.4 The making of final payment shall constitute a waiver of Claims by the Company except those arising from

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

§ A.5.26.2.5 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.6 INSURANCE AND BONDS

§ A.6.1 Contractor's Liability Insurance

§ A.6.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section A.5.18.

§ A.6.1.2 The insurance required by Section A.6.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ A.6.1.3 Certificates of insurance acceptable to the Company shall be filed with the Company prior to commencement of the Contractor's Construction Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section A.6.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section A.5.26.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section A.6.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ A.6.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Company, the Members and the Members' consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Company and the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ A.6.2 Company's Liability Insurance

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

§ A.6.3 Property Insurance

§ A.6.3.1 Unless otherwise provided, the Company shall require the Owner to purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.5.26.2 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.6.3

to be covered, whichever is later. This insurance shall include the interests of the Company, its Members, the Contractors, Subcontractors and Sub-subcontractors on the Project.

§ A.6.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Company, its Members and the Contractor’s services and expenses required as a result of such insured loss.

§ A.6.3.1.2 If the Company does not intend to have the Owner purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Company shall so inform the Contractor in writing prior to commencement of the Contractor’s Construction Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Company. If the Contractor is damaged by the failure or neglect of the Company to require the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Company shall bear all reasonable costs properly attributable thereto.

§ A.6.3.1.3 If the property insurance requires deductibles, the Company shall require the Owner to pay costs not covered because of such deductibles.

§ A.6.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ A.6.3.1.5 Partial occupancy or use in accordance with Section A.5.23.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Company and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.6.3.2 Boiler and Machinery Insurance

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

§ A.6.3.3 Loss of Use Insurance

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

§ A.6.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Company shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ A.6.3.5 If during the Project construction period the Company, or any of its Members, insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Company and its Members shall waive all rights in accordance with the terms of Section A.6.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.6.3.6 Before an exposure to loss may occur, the Company shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section A.6.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days’ prior written notice has been given to the Contractor.

§ A.6.3.7 Waivers of Subrogation

The Company and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Company's Members and the Members' consultants, separate contractors described in Section A.5.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.6.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Company or Contractor, as appropriate, shall require of the Company's Members and the Members' consultants, separate contractors described in Section A.5.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.6.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.6.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ A.6.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Company-Contractor Agreement. If after such loss no other special agreement is made and unless the Company terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Section A.5.21.

§ A.6.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Company and Contractor as the method of binding dispute resolution in the Company-Contractor Agreement. If the Company and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ A.6.4 Performance Bond and Payment Bond

§ A.6.4.1 The Company shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ A.6.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE A.7 MISCELLANEOUS PROVISIONS

§ A.7.1 Successors and Assigns

§ A.7.1.1 The Company and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section A.7.1.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ A.7.1.2 The Company may, without consent of the Contractor, assign the Contract (1) to a lender providing construction financing for the Project, if the lender assumes the Company's rights and obligations under the Contract Documents and (2) to the Owner upon dissolution of the Company if the Owner agrees to assume the Company's

rights and obligations under the Company-Contractor Agreement. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ A.7.2 Written Notice

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

§ A.7.3 Rights and Remedies

§ A.7.3.1 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.7.3.2 No action or failure to act by the Company, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ A.7.4 Tests and Inspections

§ A.7.4.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Company, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Company timely notice of when and where tests and inspections are to be made so that the Company may be present for such procedures. The Company shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Company from delegating their cost to the Contractor.

§ A.7.4.2 If the Company or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.7.4.1, the Company will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Company, and the Contractor shall give timely notice to the Company of when and where tests and inspections are to be made so that the Company may be present for such procedures. Such costs, except as provided in Section A.7.4.3, shall be at the Company's expense.

§ A.7.4.3 If such procedures for testing, inspection or approval under Sections A.7.4.1 and A.7.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Company's services and expenses shall be at the Contractor's expense.

§ A.7.4.4 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 Company.

§ A.7.4.5 If the Company is to observe tests, inspections or approvals required by the Contract Documents, the Company will do so promptly and, where practicable, at the normal place of testing.

§ A.7.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.7.5 Interest

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

§ A.7.6 Related Party Transactions

§ A.7.6.1 For purposes of the Company-Contractor Agreement, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the

aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

§ A.7.6.2 The Contractor shall not contract with any related party for the performance of any responsibilities required of it by the Company-Contractor Agreement without first obtaining the Company’s written approval. Additionally, the Contractor shall fully disclose to the Company its relationship, including any material financial arrangements, with any related party if the related party shall offer its services directly to the Company.

§ A.7.7 Copyrights and Licenses

§ A.7.7.1 The Contractor and the Company warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Company and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ A.7.7.2 License for Use of the Contractor’s Instruments of Service

§ A.7.7.2.1 The Contractor and the Contractor’s Subcontractors 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. 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 Contractor and the Contractor’s Subcontractors.

§ A.7.7.2.2 Upon execution of the Company-Contractor Agreement, the Contractor grants to the Company a nonexclusive license to use the Contractor’s Instruments of Service solely and exclusively for the Project for purposes of designing, administering, managing and constructing the Project. The Contractor shall obtain similar nonexclusive licenses from the Contractor’s Subcontractors consistent with the Company-Contractor Agreement. The license granted under this section permits the Company to authorize the Members and the other Non-Members, as well as their respective consultants, contractors, subcontractors, sub-subcontractors, and material or equipment suppliers, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The license granted in this section is conditioned on the Company’s substantial performance of its obligations, including prompt payment of all sums when due.

§ A.7.7.2.2.1 In the event the Company uses the Instruments of Service without retaining the author of the Instruments of Service, the Company releases the Contractor and the Contractor’s Subcontractors from all claims and causes of action arising from such uses. The Company, to the extent permitted by law, further agrees to indemnify and hold harmless the Contractor and its Subcontractors from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Company’s use of the Instruments of Service under this Section A.7.7.2.2. The terms of this Section A.7.7.2.2.1 shall not apply if the Company rightfully terminates the Company-Contractor Agreement for cause under Section 8.2.2 of the Company-Contractor Agreement.

§ A.7.7.2.3 Upon dissolution of the Company, or the Owner’s request to the Company to terminate the SPE Agreement for the Owner’s convenience, or the Company’s termination of the Company-Contractor Agreement pursuant to Section 8.2.4 of the Company-Contractor Agreement, the Contractor grants the Company the additional right to grant to the Owner a nonexclusive license to use the Contractor’s Instruments of Services for designing, administering, managing, constructing, using, maintaining, altering and adding to the Project. The Contractor shall obtain similar nonexclusive licenses from the Contractor’s Subcontractors consistent with the Company-Contractor Agreement.

§ A.7.7.2.3.1 The rights granted to the Company in Section A.7.7.2.3 are conditioned on the Company’s substantial performance of its obligations, including prompt payment of all sums when due, under the Company-Contractor Agreement. Such rights are further conditioned on the Contractor receiving from the Owner an agreement that in the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, (1) the Owner releases the Contractor and its Subcontractors from all claims and causes of action arising from such uses, and (2) the Owner, to the extent permitted by law, agrees to indemnify and hold harmless the Contractor and its Subcontractors from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from such uses.

§ A.7.7.2.4 Except for the licenses granted in this Section A.7.7, no other license or right shall be deemed granted or implied under the Company-Contractor Agreement. Except as provided in Sections A.7.7.2.2 and A.7.7.2.3, the

Company shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Contractor. Any unauthorized use of the Instruments of Service shall be at the Company's sole risk and without liability to the Contractor and the Contractor's Subcontractors.

ARTICLE A.8 CLAIMS AND DISPUTES

§ A.8.1 Claims

§ A.8.1.1 Definition

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

§ A.8.1.2 Time Limits on Claims

The Company and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article A.8 within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Company and Contractor waive all claims and causes of action not commenced in accordance with this Section A.8.1.2.

§ A.8.1.3 Notice of Claims

Claims by either the Company or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ A.8.1.4 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.5.23.7 and Article 8 of the Company-Contractor Agreement, the Contractor shall proceed diligently with performance of the Contract and the Company shall continue to make payments in accordance with the Contract Documents. The Company will prepare Change Orders and issue a Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ A.8.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.5.24.4.

§ A.8.1.6 Claims for Additional Time

§ A.8.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.8.1.6.2 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.8.1.7 Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to the termination of the Company-Contractor Agreement. Nothing contained in this Section A.8.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ A.8.2 Initial Decision

§ A.8.2.1 Claims arising after the commencement date of the Contractor's Construction Work, excluding those arising under Sections A.5.24.3, A.5.24.4, A.6.3.9, and A.6.3.10, shall be referred to the Initial Decision Maker for initial decision. The Initial Decision Maker shall be indicated in the Company-Contractor Agreement. Except for those Claims excluded by this Section A.8.2.1, an initial decision shall be required as a condition precedent to mediation of any such Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Company.

§ A.8.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ A.8.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Company to authorize retention of such persons at the Company's expense.

§ A.8.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ A.8.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ A.8.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section A.8.2.6.1.

§ A.8.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ A.8.2.7 In the event of a Claim against the Contractor, the Company 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 Company may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.8.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ A.8.3 Mediation

§ A.8.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Project except those waived as provided for in Sections A.5.26.2.4, A.5.26.2.5, and A.8.1.7 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ A.8.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Company-Contractor Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the

mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section A.8.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ A.8.3.3 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.8.4 Arbitration

§ A.8.4.1 Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Company and Contractor mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Company-Contractor Agreement. A demand for arbitration shall be made in writing, delivered to the other parties, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.8.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ A.8.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ A.8.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Company-Contractor Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ A.8.4.4 Consolidation or Joinder

§ A.8.4.4.1 The Company and Contractor, at their individual discretion, may consolidate an arbitration conducted under the Company-Contractor Agreement with any other arbitration to which they are a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ A.8.4.4.2 The Company and Contractor, at their individual discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ A.8.4.4.3 The Company and Contractor grant to any person or entity made a party to an arbitration conducted under this Section A.8.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Company and Contractor under the Company-Contractor Agreement.