

## GENERAL CONDITIONS FOR CONSTRUCTION

It is the objective of these documents to obtain for the Owner equipment and facilities of a high degree of quality, performance, reliability and durability. The equipment, material, and services required hereunder must conform to this intent. These documents present minimum standards considered essential to achieving a fully successful overall project.

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Article 6, Insurance; Article 9.1 Damages for Contract Suspension; Article 11.2, references to Project Manager included; Article  
11-4 forbids illegal drugs on Owner's property; Article 11-5 forbids concealed weapons; Article 29-6, Retainage; Article 30, Year  
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## ARTICLE 1: DEFINITIONS

Wherever used in the Contract Documents subject to the Special Conditions, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof.

- 1.1 Accept - Regard as proper and in compliance with the Contract Documents.
- 1.2 Addenda - Written or graphic instruments issued prior to the execution of the agreement which modify or interpret the Contract Documents, Drawings and Specifications, by additions, deletions, clarifications or corrections.
- 1.3 Agreement - Form entitled "Agreement Between Owner and Contractor", which serves as the signature page for the Contract Documents.
- 1.4 Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices and schedule for the Work to be performed.
- 1.5 Bidder - Any person, firm or corporation submitting a bid for the Work.
- 1.6 Bonds - Bid, Performance, and Labor and Material Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.
- 1.7 Change Order - A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.8 Contract - The entire and integrated agreement between the parties hereto, superseding all prior negotiations, representations, or agreements, whether written or oral. The Contract may be amended or modified only by a modification as defined in Article 1.8.
- 1.9 Contract Documents - The collection of documents which make up the substance of the Contract; specifically, the Agreement between Owner and Contractor, the Special Conditions, the General Conditions, the Specifications, the Drawings (including the Shop Drawings), all addenda thereto, and any subsequent modifications.
- 1.10 Contract Price - The total monies to be paid to the Contractor under the terms and conditions of the Contract Documents.
- 1.11 Contract Start - Unless otherwise noted, the contract start date is established as the date of contract signature by the Owner
- 1.12 Contractor - The person, firm, or corporation with whom the Owner has executed an agreement, referred to throughout the Contract Documents as singular in number and masculine in gender. The term shall also include the Contractor's authorized representative and employee(s) designated or authorized to have authority over the work.
- 1.13 Day - Calendar day, including Saturdays, Sundays, and holidays, commencing at 12:00 Midnight, local time, with a duration of 24 hours. "Working day" shall include all calendar days except Saturdays, Sundays, and holidays.
- 1.14 Designer - Each person or organization licensed to practice architecture and/or engineering and identified as such in the Contract Documents, referred to throughout the Contract Documents as if singular in number, and masculine in gender. The term "Designer" shall be extended by inference to include the Designer's authorized representative.

- 1.15 Equitable Adjustment - Where provided for in the contract documents, equitable adjustments will be calculated to allow the Contractor to recapture his reimbursable costs (as defined in Article 7 of these General Conditions), plus the fee for overhead and profit established in the Agreement. Costs incurred by the Contractor due to his negligence, failure to exercise due diligence or breach of the Agreement will not be adjusted.
- 1.16 Field Order - A written order affecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Owner to the Contractor during construction. (See "Forced Account")
- 1.17 Final Completion - The date on which all requirements of the Contract Documents have been fulfilled.
- 1.18 Forced Account - A written order affecting a change in the Work which may involve an adjustment in the Contract Price or an extension of the Contract Time, issued by the Owner to the Contractor during construction. (See "Field Order"). A Forced Account will be followed by a written Change Order when the full details of the scope of work, price and duration are known.
- 1.19 Landlord - The person or organization who holds title to the property which is the site of the Project, referred to throughout the Contract Documents as if singular in number, and masculine in gender. The term "Landlord" shall be extended by inference to include the Landlord's authorized representative. For the purposes of the Contract Documents, the terms "Landlord" and "Owner" mean and refer to the same party.
- 1.20 Modification to Contract - Written order to change the scope of the Work, Contract Price, or Contract Time.
- 1.21 Necessary - Whenever the words "necessary," "proper," or words of like effect are used in the Contract Documents with respect to the extent, conduct or character of Work specified, they shall mean that the said Work shall be carried to the extent, must be conducted in a manner, or be of a character which is "necessary" or "proper" under the circumstances in the opinion of the Designer.
- 1.22 Owner - The name of the Owner is as stated in the Agreement. The Owner is referred to throughout the Contract Documents as if singular in number and masculine in gender, and the term shall also include the Owner's authorized representative and Agent, if any.
- 1.23 Product - Material, systems, and equipment included in the Work.
- 1.24 Project - The total scope of construction designed by the Designer, of which the Work performed under these Contract Documents may be the whole or a part.
- 1.25 Provide - Furnish and install with all necessary appurtenances to insure the subject product is suitable for its intended purpose.
- 1.26 Project Manual (Specifications) - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.27 Required - Whenever the words "as required," "as directed," "as permitted" and words of like effect are used in the Contract Documents, it is understood that the requirements, direction or permission of the Designer are intended, unless otherwise stated. Similarly, the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," "acceptable to," or "satisfactory to" the Designer, unless otherwise stated.
- 1.28 Shop Drawings (Drawings) - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier or distributor,

which illustrate how specific portions of the Work shall be fabricated or installed or how they are intended to perform.

- 1.29 Special Conditions - A part of the Contract Documents which, when included, modifies, deletes and \ or amends the requirements of these General Conditions.
- 1.30 Specifications (Project Manual)- A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.31 Subcontractor - An individual, firm or corporation having a contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.32 Substantial Completion - The time at which all or a specified portion of the Work is available for its intended purpose and is so accepted by the Owner. Unless otherwise stated in writing, and agreed to by Owner and Contractor, this date shall be established as the date of final payment by the Owner.
- 1.33 Supplier (Vendor) - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the project site.
- 1.34 Work - Material and equipment incorporated in the construction described in the Contract Documents, and all labor necessary to insure that said material and equipment is installed to permit its intended function.
- 1.35 Written Notice - Any notice to any party of the Contract relative to any part of this Contract in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the Work.

## ARTICLE 2: EXECUTION AND INTERPRETATION OF CONTRACT DOCUMENTS

- 2.1 The Contract Documents shall be signed in not less than two copies, each of which shall be deemed an original.
- 2.2 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the case of discrepancy, figured dimensions, unless obviously incorrect, shall govern over scaled dimensions. Technical Specifications shall govern over the Drawings, Special Conditions and General Conditions. In any case, prior to commencing work, discrepancies and omissions shall be brought in writing to the attention of the Designer who shall issue a written clarification to all Document holders.
- 2.3 Written clarifications, approved by the Owner, necessary for the proper execution or progress of the Work in the form of drawings or otherwise, will be issued with reasonable promptness by the Designer and in accordance with and reasonably inferable from the Contract Documents, and may be effected by Field Order. Neither the Designer nor the Owner will be responsible for any oral or telephone interpretation. Any additional Drawings and instructions issued under the provisions of this Article shall become part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional Drawings and instructions.
- 2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- 2.5 Notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all except where indicated to the contrary.

- 2.6 All manufactured material and equipment shall be installed in accordance with manufacturer's instructions unless specifically directed otherwise by the Contract Documents.
- 2.7 Mechanical and electrical drawings are not intended to show exact physical locations. Installations should be made clear of obstructions and in a manner to present an orderly appearance and as directed by the Designer.
- 2.8 All drawings and specifications and copies thereof furnished for the Contractor's use are and shall remain the property of the Owner. They are to be used only in respect to this project, and are not to be used on any other project without the Owner's written permission. With the exception of one set for each party, all copies of Contract Documents shall be returned to the Owner, upon request, at final completion or termination.

### ARTICLE 3: CONTRACT SECURITY

- 3.1 If so requested by the Owner or Landlord, the Contractor shall, prior to entering into an agreement for the construction of the Work described in the Contract Documents, furnish the Owner and/or Landlord with Performance and Material and Labor Payment Bonds in penal sums equal to the amount of the Contract Price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these Bonds shall be borne by the Contractor, and he shall be allowed to increase his bid price for the Work described in the Contract Documents by an amount equal to the cost of obtaining said Bonds if the Bonds are so requested by the Owner. Form of bonds shall be the latest edition of AIA Document A312.
- 3.2 If at any time a surety on any such Bond is declared a bankrupt or loses its right to do business in the state in which the Work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

### ARTICLE 4: INDEMNIFICATION

- 4.1 To the maximum extent permitted by law, the Contractor will indemnify and hold harmless the Owner, Owner's parent, Landlord and the Designer and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Work, or the breach of any obligation of the Contractor, regardless of whether or not it is caused in part by a party indemnified under the contract.
- 4.2 In any and all claims against the Owner, Landlord or the Designer or any of their agents or employees, by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- 4.3 The obligation of the Contractor under this Article shall not extend to the liability of the Designer and Landlord, his agents or employees arising out of (1) the preparation or approval of, Drawings,

opinions, reports, surveys, Change Orders, or (2) instructions by the Designer, Landlord or Owner, their agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

- 4.4 The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that Owner shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner.

#### ARTICLE 5: SCHEDULE REQUIREMENTS

- 5.1 Unless otherwise directed, the Contractor shall, within fifteen (15) days after being awarded a Contract, prepare and submit for the Owner's approval a proposed progress schedule for the Work. This progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall allot time for major reviews and actions (e.g. Shop Drawings) required of Designer and the Owner. This schedule shall be in a form acceptable to the Owner. This schedule must be approved by the Owner, and it shall be interrelated to the schedules of all other Contractors and Subcontractors.
- 5.2 The date of beginning and the date of completion, as may be subsequently amended by Change Order, are essential conditions of the Contract. Unless otherwise stipulated in the Special Conditions, the Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations, Sundays and holiday work, as may be necessary to insure the prosecution of the Work in accordance with the approved progress schedule. If, in the opinion of the Owner, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve the progress and the Owner may require him to increase the number of shifts, and/or overtime operations, days of work including Saturdays, Sundays and holidays, and/or the amount of construction plant, all without additional cost to the Owner.
- 5.3 If the Contractor is delayed at any time in the progress of the Work, by act or neglect of the Owner, Landlord or the Designer, or by any employee of either, or by any separate contractor employed by the Owner or Landlord, or by changes ordered in the Work, or by labor disputes, weather, fire, or by delay authorized by the Owner pending arbitration or litigation, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.
- 5.4 The Contractor shall perform his work in compliance with the dates included as part of the Contract Documents. At the Owner's option, the start date and completion date of each activity can be adjusted. The Contract Price will be adjusted to equitably reflect the Contractor's cost of schedule changes.
- 5.5 All claims for extension of time shall be made in writing to the Owner no more than ten (10) days after the occurrence of the delay and will include documented details of delay; otherwise the right to claim shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and an estimate of the costs attributable to such delay.
- 5.6 If no schedule or agreement is made stating the dates upon which written interpretations as set forth shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and then not unless such claims are reasonable and presented in writing; otherwise, the right to claim will be waived.
- 5.7 Because schedule requirements are essential elements of the Contract, the Contractor shall be liable for any actual damages the Owner may incur as a result of the Contractor's failure to adhere to schedule requirements.

- 5.8 The Contractor agrees to abide by any Landlord dictated schedule restrictions and has so taken these restrictions into account when developing the progress schedule described in 5.1 above.

#### ARTICLE 6: INSURANCE

- 6.1 Insurance Provided by Contractor - The Contractor shall have the sole responsibility to purchase and maintain such insurance, with underwriting insurers rated at least A -, X by A.M. Best and on policy forms acceptable to the Owner, as will protect against claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor acknowledges that in preparing the Bid, Contractor was aware of the requirements of this Article 6, and Contractor further acknowledges that the Contract Price includes the cost of the insurance coverages required by this Article 6 (including, without limitation, Section 6.1.2.2). Such insurance minimum is the greater of the amounts set forth as follows or the amounts required by the Landlord:

6.1.1 Commercial Automobile Liability Insurance covering the ownership, maintenance or use of any motor vehicles used in the performance of the Work hereunder will be provided by the Contractor with limits of \$2,000,000 combined single limit bodily injury and property damage for each occurrence.

6.1.2 Commercial General Liability Insurance with limits of \$2,000,000 combined single limit bodily injury and property damage for each occurrence and \$4,000,000 general aggregate. The Commercial General Liability Policy will include:

6.1.2.1 Products Liability and Completed Operations Liability Insurance and such coverage shall be continued on the project for at least one year after completion and final acceptance by the Owner.

6.1.2.2 Blanket Contractual Liability Insurance covering all Contractor's indemnification obligations described in Article 4.

6.1.2.3 Broad form Property Damage Liability including coverage for the hazards of collapse and structural injury, and underground property damage and if blasting work is to be performed, to include explosion.

6.1.2.4 Personal Injury Liability coverage.

6.1.2.5 If any exposure exists, coverage for the use of owned, hired, leased, or non-owned water craft and/or aircraft shall be provided with a combined single limit of \$25,000,000 bodily injury and property damage per occurrence for aircraft and \$10,000,000 combined single limit for water craft.

6.1.3 Workers' Compensation as required by applicable statute applicable to all employees performing work under this agreement and Employers' Liability coverage with limits of \$500,000 / \$1,000,000 / \$500,000.

6.1.3.1 The following Workers Compensation special coverage provisions shall be included: Broad Form All States Endorsement; United States Longshoremen's and Harbor Workers' Compensation Act Endorsement (if applicable).

6.1.4 Certificates of Insurance

6.1.4.1 Certificates of Insurance acceptable to the Owner and Landlord shall be submitted on the latest edition of the ACORD form or equivalent and filed with the Risk Management Department of the Owner and Landlord prior to commencement of the Work. These certificates shall

contain a provision that coverages afforded under the policies will not be reduced or canceled until at least thirty days prior written notice has been given to the Owner and Landlord. It shall be the Contractor's responsibility to insure that each Subcontractor has insurance coverages on the same basis as the Contractor and that Certificates of Insurance for Subcontractors and Sub-Subcontractors will also be provided to the Owner and Landlord, if requested, on the same basis as the Contractor.

6.1.4.2 The General Liability and Automobile Liability policies as required above shall add the Owner, Designer, Landlord and Owner's representative, Crown Center Redevelopment Corporation, as additional Insureds, shall be arranged to acknowledge that they are primary before any other insurance available to the additional insured parties and shall be so indicated on the Certificates of Insurance. Copies of the policy endorsements adding the additional insured will also be submitted.

6.1.5 Contractor may at his own expense acquire any type of insurance not described in this Article which the Contractor requires for his own protection or is required by ordinance, law or statutes.

6.2 Insurance Provided by Owner - During the term of this Contract, the Owner shall have sole responsibility to procure and maintain insurance coverages as follows:

6.2.1 Property Insurance During Construction

6.2.1.1 Builders Risk Coverage - Covering that part of the buildings and/or structures which are included in the Contract while in the course of construction under a Broad Form All Risks policy underwritten by a company acceptable to Owner and Contractor. Owner, Contractor and all Subcontractors and Sub-subcontractors shall be recognized as insureds under the policy.

6.2.1.2 Extension of Builders Risk coverage to include any and all materials, supplies, equipment and machinery of any nature whatsoever to be used in or incidental to performance of Work hereunder while on work site, while in transit, while awaiting erection and during erection, until final acceptance by Owner; excluding, however, Contractor's equipment (whether owned or rented), mechanic's tools and mechanic's equipment.

6.2.1.3 It is agreed that in the event of damage to that part of the buildings and/or structures which are included in the construction project, during the course of construction, which damage is covered by Builders Risk insurance, the Owner will fund costs incurred in repairing such damage until recovery from the insurance carrier is made. Any deductible or self-insured retention applicable to the Builders Risk insurance will be the responsibility of the Owner. Damage to that part of the buildings and/or structures, which are included in the Contract while in the course of construction which is not covered by Builders Risk insurance, except any damage for which Contractor has agreed to indemnify Owner under Article 4 of this contract, will be the responsibility of the Owner.

6.2.1.4 The Builders Risk insurance and other obligations assumed by Owner within Article 6.2 will continue until such time as Owner has signed a Certificate of Substantial Completion on any phase of the construction included in this Contract so that permanent property insurance covering any such phase can be obtained 6.2.2. Owner may acquire any type of insurance not described in this Article which the Owner desires for its own protection.

## ARTICLE 7: ACTUAL-COST PRICING

7.1 Wherever the price for all or a portion of the Work is based on the Contractor's actual cost of performing such Work, the provisions of this Article shall apply. The Owner, at his discretion, may authorize basing either the Contract Price or Change Order prices on Contractor's actual costs.



- 7.2 For all Contract or Change Order prices based on Contractor's and Subcontractor's actual costs, the Contractor and Subcontractor(s) shall be allowed an additional fee to cover home and branch office overhead costs and for profit subject to owner's review and approval. The maximum price to be paid to the Contractor for that Work whose price is based on the Contractor's actual costs shall be established prior to the commencement of such Work. Regardless of the Contractor's actual costs, no monies in excess of the established maximum shall be due to the Contractor.
- 7.3 The Contractor and their Subcontractor(s) (providing more than Five Thousand Dollars (\$5,000.00) worth of labor and/or materials) shall provide a complete schedule of hourly labor cost components for each craft to be employed. These listings will be used as basis for billing labor. All items of hourly labor costs will be charged in accordance with actual payments by the Contractor and Subcontractor(s) as substantiated by certified payroll records. The Contractor and Subcontractor(s), immediately after being notified of any changes to the base labor rates for any craft employed or about to be employed on the Work, will prepare and submit to the Owner for approval, revised hourly labor rates listings. Copies of current union agreements will be furnished to the Owner upon request for crafts working under Contractor and Subcontractor(s) supervision.
- 7.4 The costs to be reimbursed under this Article shall include all of those actual costs necessarily incurred in the proper performance of the Work and paid by the Contractor and Subcontractor(s). Such costs shall not be higher than the standard rates paid in the locality of the Work without prior written consent of the Owner. The Contractor and Subcontractor(s) shall be paid for the following costs when such costs are actually incurred:
- 7.4.1 Wages paid for labor in the direct employ of the Contractor and Subcontractor(s) in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by Owner and Contractor and including such welfare or other benefits, if any, as may be payable with respect thereto.
- 7.4.2 Salaries of Contractor's and Subcontractor's employees when stationed at the job-site office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the job-site office and their salaries paid for that portion of their time spent on this Work.
- 7.4.3 Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and Subcontractor(s) and included in the Cost of Work under Subparagraphs 7.4.1 and 7.4.2.
- 7.4.4 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of transportation thereof.
- 7.4.5 Payments made by Contractor to Subcontractors for Work performed pursuant to subcontracts under this Agreement.
- 7.4.6 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor and Subcontractor(s).
- 7.4.7 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor, Subcontractor(s) or others, including transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area. All equipment rental rates shall be agreed upon by Owner in writing before commencing any Work requiring the use of such equipment. Total rental cost shall not exceed replacement cost for any item.

- 7.4.8 Cost of premiums for all bonds and insurance which the Contractor and Subcontractor(s) are required by the Contract Documents to purchase and maintain.
- 7.4.9 Sales, use, or similar taxes related to the Work and for which the Contractor and Subcontractor(s) are liable imposed by any governmental authority. The Owner will identify all tax exempt items and will provide necessary forms for requesting such exemption upon request. The Owner will not be responsible for taxes on such items so long as the exemption exists.
- 7.4.10 Permit fees and royalties.
- 7.4.11 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, express charges, and similar petty cash items in connection with the Work.
- 7.4.12 Cost of removal and disposal of all debris.
- 7.4.13 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by Owner.
- 7.5 The Owner shall not separately reimburse the Contractor and Subcontractor(s) for the following costs:
- 7.5.1 Salaries or other compensation of the Contractor's and Subcontractor's officers, executives, general managers, estimators, auditors, accountants, purchasing and contracting agents and other employees at the Contractor's and Subcontractor's principal office and branch offices, except employees of the Contractor and Subcontractor(s) when engaged at shops or on the road in expediting for the Work, and then only with prior written approval of the Owner.
- 7.5.2 Direct expenses of the Contractor's and Subcontractor's Principal and Branch office.
- 7.5.3 Any part of the Contractor's and Subcontractor's capital expenses, including the interest on the Contractor's and Subcontractor's capital employed for the Work.
- 7.5.4 Overhead or general expenses of any kind, except as may be expressly included in the Agreement.
- 7.5.5 Costs due to the negligence of the Contractor, any of his Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable including but not limited to the correction of defective Work, disposal of materials, and equipment wrongly supplied, or making good any damage to property.
- 7.5.6 The cost of any payment made directly or indirectly to any government agent, company, or any individual for the purpose of influencing government decisions or securing preferential treatment or special considerations.
- 7.5.7 The cost of any item not specifically and expressly included in the terms described in Article 7.4.
- 7.5.8 Costs in excess of the Guaranteed Maximum Cost, as set forth in the Agreement or Change Order, and adjusted pursuant to the Agreement or Change Order.
- 7.6 The Contractor and Subcontractor(s) shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be satisfactory to Owner. The Owner shall be afforded access to all the Contractor's and Subcontractor's records, books, correspondence, instructions, drawings, and the Contractor and Subcontractor(s) shall preserve all such records for a period of three years, or for such longer period as may be required by law, after

the final payment. The Contractor and Subcontractor(s) shall deliver to Owner a statement, showing in complete detail, all monies paid out or costs incurred by him on account of the cost of the Work during the previous month for which he is to be reimbursed and the amount of the Contractor's and Subcontractor's fee, due together with payrolls for all labor, all receipted bills for which payment has been made, and lien waivers from all subcontractors and suppliers who have in any way worked on or supplied any improvements to the project.

#### ARTICLE 8: CHANGE ORDERS

- 8.1 The Owner, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time shall be adjusted accordingly. All such Changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.
- 8.2 The Owner may establish one or more of the following means as a basis for establishing a Change Order Price:
- 8.2.1 By a lump sum proposal acceptable to Owner, which shall be accompanied by detailed estimate of quantities and prices of each material or labor unit required. Included in this sum shall be Contractor's percentage profit and overhead, as established in the Agreement.
- 8.2.2 By unit prices stated in the Contract Documents or subsequently agreed upon. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.
- 8.2.3 By adding all reimbursable costs as established under Article 7, and an amount equal to an agreed-upon percentage of such costs, such percentage to be established in the Agreement which together shall constitute complete compensation for such changes.
- 8.3 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Article 27.9. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order. The Owner reserves the right to direct the Contractor to continue work in the event that disputes arise over claims by the Contractor.
- 8.4 The Designer shall have authority to order changes or clarifications in the Work not involving an adjustment in the Contract Sum or an extension in the Contract Time or a change in esthetic qualities, and which are reasonably consistent with the intent of the Contract Documents. The Contractor shall comply with such Field Orders without claim for additional time or monies.

#### ARTICLE 9: SUSPENSION OF WORK AND TERMINATION

- 9.1 The Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the Contractor, by written notice to the Contractor, which notice shall fix the date on which Work shall be resumed. The Contractor will resume the Work on the date so fixed. The Contractor will be allowed an extension of the Contract Time, directly attributable to any suspension. The Contract Price will be adjusted to equitably reflect the Contractor's cost of schedule changes.

- 9.2 If Owner elects to suspend all or a portion of the Work because of the Contractor's failure to correct defective Work, or because of the Contractor's refusal to supply equipment or materials or adequate labor in accordance with the Contract Documents, no increase in Contract Time or Price will be allowed.
- 9.3 The Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety a minimum of five (5) calendar days from receipt of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method he may deem expedient in any of the following conditions:
- 9.3.1 if the Contractor is adjudged a bankrupt or insolvent;
  - 9.3.2 if he makes a general assignment for the benefit of his creditors;
  - 9.3.3 if a trustee or receiver is appointed for the Contractor or for any of his property;
  - 9.3.4 if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws;
  - 9.3.5 if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
  - 9.3.6 if he continually performs work not in accordance with the plans and specifications;
  - 9.3.7 if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment;
  - 9.3.8 if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work;
  - 9.3.9 if he disregards the authority of the Designer;
  - 9.3.10 or if he abandons the project, or if he otherwise violates any provision of the Contract Documents.

In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Designer and incorporated in a Change Order

- 9.4 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- 9.5 After five (5) days from delivery of a written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, terminate the Contract. In such case, the Contractor shall be paid for all Work executed on the basis herein. Fees, other than reimbursable costs, shall be prorated.
- 9.6 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, then the Contractor may, after five (5) days from delivery of a written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained. In addition and in lieu of terminating the Contract, the Contractor may upon five (5) days written notice to the Owner stop Work until the reason for the suspension is eliminated. Upon resumption of the Work, a Change Orders shall be issued for extending the Contract Time to compensate for the delays attributable to the stoppage of the Work.

#### ARTICLE 10: RESPONSIBILITIES OF THE DESIGNER

- 10.1 The Designer will be a representative of the Owner during construction and until final payment. The Designer will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument which will be shown to the Contractor. The Designer will advise and consult with the Owner.

- 10.2 The Designer shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Designer may perform his function under the Contract Documents.
- 10.3 The Designer will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as a Designer, he will keep the Owner informed of the Progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The Designer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
- 10.4 Claims, disputes and other matters in question between the Contractor and Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Designer for decision which he will render in writing within a reasonable time. All interpretations and decisions of the Designer shall be consistent with the intent of the Contract Documents.
- 10.5 The Designer will not be responsible for the acts or omissions of Contractor, or any subcontractors, or any of his or their agents or employees or any other persons at the site or otherwise performing any of the Work. The Designer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and he will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 10.6 The Designer will review all Change Order requests to determine the necessity and desirability of the scope of work.
- 10.7 The Designer will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work, whether or not such Work be then fabricated, installed or completed. However, neither the Designer's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Designer to the Contractor, and Subcontractor, any of their agents or employees, or any other person performing any of the Work.

#### ARTICLE 11: RESPONSIBILITIES OF THE CONTRACTOR

- 11.1.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover. The Contractor shall be liable for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents if he fails to report them and proceeds with the Work without written clarification. The Contractor shall do no Work without Drawings, Specifications or Modifications.
- 11.1.2 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees, and all other persons performing any of the Work under a Contract with the Contractor. The Contractor shall designate a competent project manager and superintendent and may designate other persons who shall be authorized to make commitments on behalf of the Contractor and who shall be responsible for the Contractor's employees, subcontractors, and vendors. The superintendent and necessary assistants shall be in attendance at the Project site during the progress of the Work. The project manager and superintendent shall be satisfactory to Owner, and shall not be changed except with the consent of the Owner, unless they prove to be unsatisfactory to the Contractor and cease to be in his employ. The project manager and superintendent shall represent the Contractor and all communications given to one shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on request.

11.1.3 The Contractor shall retain the services of a surveyor, licensed to practice in the State of the project location, to establish lines and grades, to certify actual locations relative to property lines, and to establish lines and grades for subcontractors' work.

11.1.4 The Contractor shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Contractor will not allow persons under his control to bring or use of illegal or controlled substances or alcoholic beverages on Owner's or Landlord's property.

11.1.5 The Contractor will not allow persons under his control to bring concealed or unconcealed weapons onto Owner's or Landlord's property.

11.1.6 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

11.1.7 The following construction related details shall be designed and stamped by a Professional Engineer, registered in the state where the work is performed, unless standard pre-engineered systems are used and appropriate technical submittals are provided to the Engineer of record for approval:

11.1.7.1 Determination of safe side slope conditions of excavations. Design of all needed shoring, tiebacks, soil retention systems, and underpinning techniques.

11.1.7.2 Design of structural forming, bracing, and shoring for concrete and masonry placement.

11.1.7.3 Design of temporary shoring, bracing, or other supports for steel erection and bar joist installation.

11.1.8 The Contractor shall not damage, deface, or cut holes into the building structure without specific approval of the Owner or Owner's Designer. Building structure includes, but is not limited to, structural steel members, concrete beams, floors, block walls, building facade, and load bearing walls. Prior to cutting holes, Contractor shall determine location of all reinforcing steel using steel detection devices or by drilling pilot holes. Steel reinforcement shall not be cut without approval of Owner or Designer.

11.1.9 The Contractor will insure against conflicts between Owner's normal plant operations and construction. All potential interferences with Owner's operations will be reviewed with and approved by Owner before Work proceeds, and the Contractor will comply with Owner's recommendations.

11.1.10 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment. If the space designated by the Owner is insufficient for the storage and construction of material and equipment, the Contractor shall at his expense provide for additional easements, right-of-way permits, and property as may be required.

11.1.11 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted by appropriate Modifications, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

11.1.12 The Contractor shall pay all sales, consumer, use, and other similar taxes required by law. The Owner will furnish all information necessary concerning any material or equipment that may be exempt from taxation.

11.1.13 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. These allowances shall cover the net cost of the materials and equipment delivered and unloaded at the site, and all applicable taxes, the Contractor's handling costs on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance. The Contractor shall cause the Work covered by these allowances to be performed for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order.

11.1.14 The Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, Samples and other Modifications, in good order and marked to record all changes made during construction. These items should be currently marked to indicate the exact locations of the installation of the various items of Work, to record all changes made during construction and all other data required to produce complete set of "as-built" Drawings, shall be available for periodic review, and they shall be delivered to Owner upon completion of the Work, neatly marked to record all as-built conditions and changes made during construction. Final payment shall be withheld until satisfactory as-built information is furnished to Owner.

11.1.15 The Contractor shall request permission of the Owner 24 hours prior to shutting off any utility, fire protection system or life safety system.

11.1.16 The Contractor shall take all reasonable precautions to prevent damage to the Owner's property which is affected by construction. Specifically, he shall secure the property to prevent theft and vandalism, he shall provide temporary heat when necessary until acceptance by the Owner, and he shall comply with Orders of fire authorities, including the Owner's insurance carriers, and shall provide adequate fire equipment at the site. Furthermore, he shall protect the property from all types of water damage, and shall provide adequate pumping and snow removal equipment when necessary. If he damages property of the Owner or of a third party, he shall immediately repair such damage, or the Owner may make necessary repairs and charge the Contractor the cost thereof.

11.1.17 Prior to claiming Final Completion, the Contractor shall deliver to Owner copies of all special warranties and/or bonds as may be required by the Contract Documents. He shall also deliver all reports of Inspection, occupancy permits, and other certificates as may be required prior to claiming Substantial Completion.

11.1.18 The execution of the underlying Contract does not create an agency relationship between the Contractor and the Owner for any other purpose than is specifically set forth in the Contract Documents, and particularly no such agency relationship is created for purposes of the Contractor's and Subcontractor's compliance with the OSHA Standards.

11.1.19 For projects where the Owner is lessee, the Contractor shall follow all Landlord rules and regulations and pay any Landlord charges resulting from the Contractor's or Subcontractors' activities.

11.1.20 The Contractor agrees that he will not at any time either directly or indirectly, use any subcontractors or labor in the Work if the use of such subcontractors or labor creates or threatens any work stoppage by any other contractors or labor engaged by the Owner or Landlord or others in the construction, maintenance or operation of the Owners or Landlords property. In the event of any strike or picketing in or about the Owners or Landlords property directed at the Contractor, the

Contractor agrees to replace such subcontractor or labor causing the strike or picketing with subcontractors or labor that will rectify the strike or picketing at no additional cost or time to the Owner.

11.1.21 The Contractor, Subcontractors and Suppliers shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be satisfactory to Owner. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, and the Contractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after the final payment.

## ARTICLE 12: SUBCONTRACTORS AND SUPPLIERS

- 12.1 The Contractor may utilize the services of Subcontractors on those parts of the Work which, under normal contracting practices, are performed by Subcontractors. The Contractor shall not award to any single Subcontractor Work in excess of fifty percent (50%) of the Contract Price without specific authorization from the Owner.
- 12.2 The Contractor shall be responsible to the Owner and Landlord for the acts and omissions of his Subcontractors and suppliers, and of the persons either directly or indirectly employed by them, as he is for the acts and omissions of persons employed directly by himself.
- 12.3 Unless otherwise specified in the Contract Documents or in the instructions to Bidders, the Contractor shall submit with his bid a list of the names of the Subcontractors and suppliers proposed for the principal portions of the Work. The Owner shall notify the Contractor in writing if the Owner has reasonable objection to any Subcontractor or supplier on such list and does not accept him. Failure of the Owner to make objection to any Subcontractor on the list prior to award of Contract shall constitute acceptance of such Subcontractor. The Contractor shall notify the Owner in writing of any changes in the aforementioned list of Subcontractors and Suppliers.
- 12.4 The Contractor shall submit the names of qualified ethnic minority subcontractors and suppliers that he intends to use in the performance of this contract. The Contractors shall submit with his final billing a listing of all sums paid to qualified ethnic minority contractors as a part of this contract. Note: a "qualified" ethnic minority contractor is one who has been so certified by any local, state, or federal agency. Contractors and suppliers who qualify under these provisions must be prepared to prove their qualifications.
- 12.5 The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) who has been rejected by the Owner. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection.
- 12.6 If the Owner refuses to accept any Subcontractor or Supplier on a list submitted by the Contractor in response to the requirements of the Contract Documents, the Contractor shall submit within ten (10) days an acceptable substitute and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or lists of names as required by the Contract Documents. If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the Owner unless the substitution is acceptable to the Owner.



- 12.7 All Work performed for the Contractor by a Subcontractor and all purchases from suppliers shall be pursuant to an appropriate agreement between Subcontractors and Sub-Subcontractors or suppliers which shall contain provisions that:
- 12.7.1 preserve and protect the rights of the Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
  - 12.7.2 require that such Work be performed in accordance with the requirements of the Contract Documents and these General Conditions as appropriately amended in the Special Conditions;
  - 12.7.3 require submission to the Contractor applications for payment under each agreement to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the payment schedule.
  - 12.7.4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;
  - 12.7.5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance;
  - 12.7.6 obligate each Subcontractor specifically to consent to the provisions of this Paragraph;
  - 12.7.7 obligate waivers of liens on all Work and material furnished during the previous pay period to be furnished with the Subcontractor's Application for Payment; require Final Waivers of Lien and Release of Rights Documents from all Subcontractors, Sub-Subcontractors and Suppliers who have performed work or supplied anything on the project and additional information as may be required by the Landlord.
  - 12.7.8 require Subcontractors to provide cost breakdowns as may be required by the Owner.
  - 12.7.9 require each subcontractor to state his markup for overhead and profit for work performed with his own forces, as well as that performed by sub-subcontractors.
- 12.8 Nothing contained in the Contract Documents shall create a contractual obligation by the Owner to the Subcontractor or Suppliers.

#### ARTICLE 13: QUALITY CONTROL AND TESTING

- 13.1 Periodically or continuously during construction, the Owner may require that testing be performed to determine that materials provided and methods used for the Work meet the specified requirements. Requirements for testing may be described in various sections of the Specifications. Additionally, the Owner may require testing to be performed under current pertinent testing standards when no testing requirements are described.
- 13.2 The Owner will select the testing laboratory and pay for all initial testing services requested by the Owner, and for all initial testing services which law or ordinance require the Owner to pay for. When initial tests indicate non-compliance with the Contract Documents, the Contractor shall pay the costs involved for any re-testing necessitated by such non-compliance. Unless otherwise noted, the Contractor shall provide test samples free of charge, and the testing laboratory will provide all required personnel and equipment for obtaining specimens and samples and delivery of samples and specimens to the laboratory.

- 13.3 The contractor shall arrange and pay for (1) inspections and tests specified as the Contractor's responsibility in the various sections of the Specification; (2) inspections and tests required by Government Ordinances or Codes, or approving authorities which are not specifically designated to be the responsibility of the Owner; and (3) inspections and tests performed for the Contractor's convenience. All tests shall be made by a qualified testing laboratory, approved by the Owner.
- 13.4 Testing Laboratory Representatives shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the Laboratory Representatives may properly perform their functions.
- 13.5 The Owner reserves the right to monitor the execution of the Work through the use of on-site inspectors, who shall be hired by the Owner. Inspectors shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter or waive any requirements of the Contract Documents. He is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. He shall have the authority to reject materials or workmanship which fails to conform to the Contract Documents. The inspector shall in no case act as a foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the inspector may give the Contractor shall in no way be construed as binding on the Owner or Designer in any way, or releasing the Contractor from fulfilling all of the terms of the Contract.
- 13.6 The Owner's decisions or actions in regard to testing or not testing materials or methods shall not relieve the Contractor of any of his responsibilities under the Contract Documents.

#### ARTICLE 14: NOTICE FOR COVERING WORK

- 14.1 Contractor shall give the Designer and Owner timely notice of readiness of the Work for all inspections, tests or approvals. If any such Work required so to be inspected, tested or approved is covered without written approval of the Designer, it must, if requested by the Designer, be uncovered for observation, and such uncovering shall be at Contractor's expense unless Contractor has given Designer timely notice of his intention to cover such Work and Designer has not acted within three working days in response to such notice. Neither observations by Designer nor inspections, tests or approvals by persons other than Contractor shall relieve the Contractor from his obligation to perform the Work in accordance with the requirements of the Contract Documents.
- 14.2 If any Work is covered contrary to the request of the Designer or Owner, it must, if required by the Designer or Owner, be uncovered for his observation and replaced at the Contractor's expense.
- 14.3 If any other Work has been covered which the Designer has not specifically requested to observe prior to being covered, the Designer may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate Contractor employed as provided in Article 20, and in that event the Owner shall be responsible for payment of such costs.

#### ARTICLE 15: CORRECTION OF WORK

- 15.1 The Contractor shall promptly correct all Work rejected by the Designer or Owner's Inspectors as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including but not limited to compensation for the Designer's or Inspectors' additional services. Likewise the Contractor shall promptly repair at his expense his damage to Owner's property, and damage to the property of third parties.

- 15.2 Notwithstanding acceptance of the Work by Owner, if any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner had previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.
- 15.3 All such defective or non-conforming Work under Articles 15.1 and 15.2 shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.
- 15.4 The Contractor shall bear the cost of making good all Work of separate Contractors destroyed or damaged by such removal or correction.
- 15.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for additional architectural services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.
- 15.6 If the Contractor fails to correct such defective or non-conforming Work, the Owner may correct it and charge the Contractor for all costs thereof.
- 15.7 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, and/or to require an extended warranty. If the amount is determined after final payment, it shall be paid by the Contractor.

#### ARTICLE 16: SHOP DRAWINGS, SAMPLES AND MANUALS

- 16.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work. Shop Drawings shall be submitted for all Work so specified. Drawings shall be complete and accurate, showing appearance, dimensions, materials, jointing methods, fasteners, and all other pertinent information required for fabrication and installation. Where material or color selection is available, it shall be noted and samples of choice submitted. For equipment or materials, the Contractor shall submit brochures showing appearance, size, finishes, required services, performance, etc.
- 16.1.1 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged. Samples shall be submitted for all Work so specified or required to complete selection of materials for fabrication or erection. Samples shall be sufficiently large to illustrate standards to be established by the sample. Color samples shall be true and as closely equal as possible to actual color.
- 16.2 In addition to shop drawings, Contractor shall provide Owner drawings and calculations stamped by a Professional Engineer, registered in the state where the work is performed, for components of the structure that are not designed by the Engineer of Record. Building components included under this Article include, but are not limited to, building skin and siding, curtain walls, precast components, racks and rack supported buildings, post-tensioning systems, movable partition systems, and miscellaneous structural steel packages.

- 16.3 The Designer's acceptance of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Designer in writing of such deviations at the time of submission and the Designer with Owner's concurrence has given written approval to the specific deviations. Nor shall the Designer's acceptance relieve the Contractor from responsibility for errors or omissions in the Shop Drawings and Samples.
- 16.4 The Contractor shall review and coordinate all Shop Drawings before submitting them to the Designer. By approving and submitting Shop Drawings and Samples, the Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.
- 16.5 The Designer will review and accept Shop Drawings and Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. Acceptance of a separate item shall not indicate approval of an assembly in which the item functions unless so indicated.
- 16.6 No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been accepted by the Designer and/or Landlord. All such portions of the Work shall be in accordance with acceptable Shop Drawings and Samples.
- 16.7 The Contractor shall forward at least four (4) sets, plus such additional sets as the Contractor shall want returned, of all submitted data to the Designer for acceptance. Shop Drawings and Samples shall be properly identified by Project location, Owner Project Number, and with additional identification as the Owner may require. At the time of submission the Contractor shall inform the Designer in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents. Shop Drawings Larger than 8" by 11" shall be sepia or mylar reproducible. All other sizes may be on reproducible paper.
- 16.8 All Shop Drawings, submittal data, Samples, color chips, and other detailed information will be submitted to the Designer in accordance with the construction schedule. Failure to meet this requirement will be considered evidence of unsatisfactory prosecution of Work, and shall be grounds for withholding payment. The Contractor shall make any corrections required by the Designer and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Designer on previous submissions. All information shall be submitted early enough to assure prompt delivery.
- 16.9 The Contractor shall furnish the Designer a minimum of three (3) copies of operating manuals for all equipment installed under this Contract. This information will be presented in a neat, bound, 8 1/2" x 11" booklet, and will contain, as a minimum, all instructions necessary to operate and maintain each piece of equipment in its intended manner, manufacturer's warranties, parts lists and name and location of qualified vendors, and all approved installation and Shop Drawings.
- 16.10 The Contractor shall furnish copies of any shop drawings or samples as may be required by the Landlord or his agents and obtain the Landlord's or his agent's acceptance of such shop drawings or samples.

#### ARTICLE 17: SUBSTITUTIONS

- 17.1 The Contract is based on the materials, equipment, systems and methods described in the Contract Documents. The Contractor shall not substitute materials, equipment, systems, or methods unless such substitution has been approved in writing by the Designer.

- 17.2 The Contractor shall be responsible for notifying the Designer promptly whenever it is apparent that specified items will not be available in time for installation during the orderly and timely progress of the Work. The completion time of the Contract will not be extended for delays due to non-availability of specified items when such delays could have been avoided by the Contractor.
- 17.3 The Designer will not consider any request for substitution unless the request is accompanied by complete data substantiating the item's compliance with the intent of the Contract Documents, identification and description, performance and test data, references and samples where applicable, and an itemized comparison of the proposed substitution to the item specified, such comparison to include scheduling factors, design and appearance considerations, and the relationship to other contracts. Furthermore, any request for substitution must be accompanied by accurate cost data on the proposed substitution in comparison to the product specified, whether or not modification of the Contract Price is to be considered.
- 17.4 In requesting a substitution, the Contractor shall specifically state in writing that he:
- 17.4.1 has personally investigated the proposed substitute product and determine that it is equal or superior in all respects to the specified item;
- 17.4.2 will provide the same or better guarantee for the substituted product that he would for that specified;
- 17.4.3 certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate Contracts and associated redesign fees, and that he waives all claims for additional costs related to the substitution which subsequently become apparent;
- 17.4.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- 17.5 The Contractor is encouraged to submit to the Owner, through the Designer, suggestions to improve the quality of the Owner's finished Project. These suggestions may include different methods or materials, and should cover Project cost, shorten construction time, or improve Project quality. All information related to this suggestion will be submitted in accordance with the provisions of this Article.

#### ARTICLE 18: EQUAL OPPORTUNITY

- 18.1 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
- 18.2 The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

#### ARTICLE 19: SURVEYS, PERMITS, REGULATIONS

- 19.1 Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work together with a suitable number of bench marks adjacent to the Work

as shown in the Contract Documents. From the information provided by the Owner, unless otherwise specified in the Contract Documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, stakes for pile locations and other working points, lines, elevations and cut sheets.

- 19.2 The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- 19.3 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor unless otherwise stated in the Special Conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the Contract Documents are at variance therewith, he shall promptly notify the Designer in writing, and any necessary changes shall be made.

#### ARTICLE 20: SEPARATE CONTRACTS

- 20.1 Owner reserves the right to award separate Contracts in connection with other portions of the Project under these or similar conditions of the Contract. When separate Contracts are awarded for different portions of the Project, the "Contractor" in the Contract Documents in each case, shall be the Contractor who signs each separate Contract with the Owner. When two or more Contracts are awarded on a single Project, the Owner shall coordinate the Work of the various Contractors.
- 20.2 The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall properly connect and coordinate his Work or results upon the Work of any other separate Contractor. The Contractor shall inspect and promptly report and confirm in writing to the Owner any apparent discrepancies or defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of the other Contractors' Work as fit and proper to receive his Work, except as to defects which may develop in the other separate Contractors' Work after the execution of the Contractor's Work. Should the Contractor delay or cause damage to the Work or property of any separate Contractor on the Project, the Contractor shall, upon due notice, settle with such other Contractor by agreement or arbitration, if he will so settle. If such separate Contractor sues the Owner or initiates an arbitration proceeding on account of any delay or damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's and court or arbitration costs which the Owner has incurred.
- 20.3 The Contractor shall be responsible for any cutting, fitting, and patching that may be required to complete his Work except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any Work of any other Contractors by cutting, excavating or otherwise altering any Work and shall not cut or alter the Work of any other Contractor except with the written consent of the Designer. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.
- 20.4 If a dispute arises between the separate Contractors as to their responsibilities for cleaning up, the Owner or Landlord may, with twenty-four hours notice to the Contractors involved, clean up and charge the cost thereof to the several Contractors as the Owner deems appropriate.

#### ARTICLE 21: MATERIALS, SERVICES AND FACILITIES

- 21.1 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and install and complete as specified and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other utilities and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
- 21.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials not yet incorporated in the Work, for which the Contractor seeks reimbursement, shall be stored on the Owner's property, unless written waivers allow otherwise. The Owner shall designate job site storage areas. Areas designated for storage may change during the time of construction, and the Contractor shall move his materials and equipment to other points on the job site or off the job site when so requested. Any such moves will be made without additional payment from the Owner.
- 21.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer and/or Designer.
- 21.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Designer. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- 21.5 Method of operation, the operator and the source of heating energy shall be determined by the Contractor, except as noted, and shall be selected in such manner as to provide ample and proper type of heat for the several materials being protected or dried. The use of "salamanders" will not be permitted, and non-vented open-flame heaters will not be permitted inside after the building is closed in.
- 21.6 The operations of the Contractor shall be in full conformity with all rules and regulations of boards and bodies having jurisdiction with respect to health and sanitation. The Contractor shall supply safe and sufficient drinking water and toilet facilities to all employees, shall obey and enforce all sanitary and health regulations and orders, and shall take precautions against the spread of infectious disease.

#### ARTICLE 22: CODES AND STANDARDS

- 22.1 Reference to standard specifications of any technical society, organizations, or associates, or to codes of local or state authorities, shall mean the latest standard, code, specifications, or tentative specifications and adopted and published at the date of taking bids, unless specifically stated otherwise.
- 22.2 The Contractor shall obtain at least one set of each such standard specifications specifically referenced in the Contract Documents and shall have them available on request.

#### ARTICLE 23: SITE INVESTIGATION

- 23.1 Prior to submitting his bid, each Bidder shall inspect the site of the proposed Work so as to arrive at a clear understanding of the conditions under which the Work is to be accomplished. Unless furnished by the Owner, each Bidder shall assure himself of actual elevations, obstructions, utilities, subsurface conditions, and all other physical characteristics of the Work area which may impact on his choice of means, methods or materials necessary for the proper execution of the Work.

- 23.2 The Owner will furnish to the Contractor a Site Investigation Soils Report for projects requiring site preparation and/or foundation work. Information that impacts the project such as boring logs, underground utilities, ground water observations, probable excavation conditions, suitable foundation and tie-beam alternatives, probable bearing elevations, floor slab support conditions, stability requirements for exposed vertical cuts, retaining wall and drainage alternatives and backfilling requirements. This information can be relied upon by the Contractor for his bid. The Owner is not responsible for existing conditions outside the boundaries of the project site, and the Contractor should take reasonable action to acquaint himself with such conditions.
- 23.3 The Contractor shall promptly notify the Designer in writing of any subsurface or latent physical condition which differs materially from that shown in the Contract Documents. Except in the event of an emergency, the Contractor shall not disturb such differing condition without the express written consent of the Designer. The Designer shall investigate the condition and make recommendations to the Owner concerning design changes and/or Contract Time or price changes necessitated by the differing condition. The Owner shall review the Designer's recommendations and, upon making a determination, issue a Change Order to establish an equitable adjustment.

#### ARTICLE 24: MEETINGS

- 24.1 During the construction period, meetings will be held among the Owner, the Designer, and the Contractor. Representatives of the Contractor and those Subcontractors and material suppliers who have been notified shall attend each meeting. Each representative in attendance shall be vested with executive authority to speak and make decisions for the company or firm he represents. Meetings may be scheduled for regular intervals or as the needs of the Project dictate. Any one of Owner, Designer, or the Contractor may request such a meeting, but the Owner will be notified of all such requests at least 24 hours prior to the Meeting taking place. The person calling the meeting shall publish a Meeting Agenda and issue copies to all parties prior to the meeting. The Contractor will record minutes of all Progress Meetings and will distribute copies to the Owner and all present within 48 hours of the meeting.

#### ARTICLE 25: REQUIREMENTS FOR FOREIGN CONTRACTORS AND SUPPLIERS

- 25.1 Foreign Contractors and suppliers must conform to the laws of the state of the Project location. Before a contract is awarded which involves a foreign Contractor or supplier, Owner may require the Contractor to furnish a certificate from the Secretary of State demonstrating that the Contractor or supplier is qualified to conduct business in the State of the Project location.

#### ARTICLE 26: WARRANTY

- 26.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials, and equipment. Notwithstanding acceptance of work by Owner, within one year thereafter unless otherwise specified, the Owner or Landlord may require Contractor, at his cost, to replace or repair any defective material or equipment or Owner may return such defective articles to the Contractor and recover from the Contractor the contract price thereof. Unless otherwise agreed to in writing, the warranty period shall begin on the date of Substantial Completion.
- 26.2 Nothing contained in this Article or any other provision of these General Conditions shall be construed to establish a period of limitation with respect to the time within which the Contractor's obligations to comply with the Contract 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 such obligations.



ARTICLE 27: SAFETY AND SECURITY

- 27.1 All activities of contacting firms on the premises of the Owner or Landlord are to be conducted in accordance with all applicable laws governing building codes, regulations, and the Owner's Safety Practices specified below. The Contractor will be required to, but is not necessarily limited to, furnishing and installing all materials, equipment and devices and taking all necessary protective measures for the safety of public and private property, workmen and the general public. All Work included in this Contract shall comply with the requirements of all applicable local, state and federal health and safety regulations.
- 27.2 The Contractor shall provide, if approved by the Landlord, suitable storage space outside the immediate building area for storing flammable materials and paints; storage will not be permitted in the building. Flammable liquids being used inside the building shall be kept in closed metal containers and removed from building when not in use.
- 27.3 The Owner or Landlord will be notified in writing of the specific location of any burning or welding necessary for the construction processes. This notification must be presented at least 24 hours prior to commencing such Work. The Owner or Landlord will review such notification and may require modifications and safeguards to protect the Owner's or Landlord's property. The Owner's or Landlord's review of this notification shall in no way reduce the Contractor's responsibility to protect persons and property from damage. The Contractor will make at least one fire extinguisher available at each location where welding or cutting is being conducted, and will protect combustible material with shields as required.
- 27.4 Trash and waste material will not be burned on the Owner's or Landlord's property.
- 27.5 Smoking is not permitted on the Owner's premises. The Contractor will not allow persons under his control to smoke on the Owner's premises.
- 27.6 Fires will be reported immediately on company phone or as Landlord requires.
- 27.7 The Contractor will pick up and dispose of trash on a regular basis, and will not allow any trash to accumulate. Under no conditions will rubbish or waste be dropped or thrown from one level of the building to another, within or outside of the building unless authorized in writing by the Owner. The Owner and Landlord reserves the right to clean up trash if necessary and withhold an amount equal to the cost of same, divided among the affected Contractors.
- 27.8 Contractors are responsible to provide their workers with appropriate first aid treatment and are responsible for reporting injuries in accordance with Workers Compensation and their other insurance provisions. Contractor shall post at each telephone location on the site a list of emergency medical telephone numbers. All injuries requiring medical treatment shall be reported to the Owner and Landlord, if required, who will take affidavits stating cause, nature, time, and all other pertinent information related to the injury.
- 27.9 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner or Designer, shall act to prevent threatened damage, injury or loss. He will give the Owner and Designer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall thereupon be issued covering the changes and deviations involved.
- 27.10 Whenever unsafe working conditions are discovered, the Owner or the Designer may notify the Contractor of such, and the Contractor shall promptly alleviate the unsafe condition. The Owner reserves the right to stop any or all Work affected by those conditions until such time as those conditions are eliminated. Failure of the Owner or his representative to so notify the Contractor shall not relieve the Contractor of his sole responsibility to alleviate unsafe conditions. No increase

in time or money shall be due the Contractor due to a suspension of Work under these circumstances. Additionally, the Owner and Landlord reserves the right to make emergency corrections to work performed by or affected by the Contractor, without prior notice, and to charge the Contractor accordingly. In these cases, the Contractor shall be notified as quickly as possible.

- 27.11 The Contractor shall conduct meetings to discuss safe working methods with all workers under his control on a regular recurring basis, but not less than weekly. A copy of the minutes and a list of attendees will be submitted to the Owner on request not later than 48 hours after such meeting.
- 27.12 Prior to the commencement of construction, the Owner or Landlord will designate the point(s) of entrance/exit to the project site for construction personnel, equipment and material. Entrance/exit will be limited to such point(s).
- 27.13 The Owner and Landlord reserves the right to require all personnel under the Contractor's jurisdiction to wear identification cards issued by the Owner or Landlord, and to sign in and out at a point designated by the Owner or Landlord when entering or leaving the Owner's or Landlord's property. Vehicles, containers and other articles which anyone wishes to bring onto or remove from the Owner's or Landlord's property are subject to inspection and the Contractor shall conspicuously post signs to this effect at all entrances. Consenting to a reasonable inspection shall be condition of entering the Owner's or Landlord's property.
- 27.14 No material/equipment, whether owned by Contractor, Contractor's employees, or other parties doing business with the Contractor, will be removed from Owner's or Landlord's property without authorization from the Owner or Landlord.
- 27.15 The Contractor has the affirmative duty to seek out and identify actual and potential safety hazards, abate them and instruct all personnel on the site accordingly.
- 27.16 The Owner and Contractor agree to notify each other of location and quantities of "hazardous material(s)" as defined by OSHA regulation 29CFR.1910.1200 which may reasonably be present in proximity or en route to work being performed. Parties further agree to provide each other a Material Safety Data Sheet for such hazardous material. Contractor assumes liability for hazardous material notification of his subcontractors and suppliers.
- 27.17 The Contractor will fully comply with all Federal, state, and local environmental laws and regulations including, but not limited to, the Clean Air Act, Clean Water Act, Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), all as amended. The Contractor understands that his activities may create certain liabilities for the Owner and Landlord under these laws and regulations, and agrees that he will do everything in his power to minimize such liabilities.
- 27.18 The Contractor will supply Material Safety Data Sheets (MSDS) for all hazardous materials prior to their storage, use, or disposal, and will obtain approvals from the Owner prior to using such materials. The contractor shall follow all Manufacturers' instructions in using, storing, and disposing of any hazardous materials. The Contractor shall make solid waste determinations for all materials used in the project and shall dispose of all solid wastes properly, including proper disposal of hazardous wastes. The Contractor agrees to maintain designated collection points for spent materials until appropriate disposition of materials can be made. The Contractor agrees to allow the Owner to take possession of certain spent materials for disposal, as, when and if dictated by the Owner. Nothing in the action of the Owner, such as taking possession of certain spent materials, shall relieve the Contractor from any responsibility under any laws or regulations.

#### ARTICLE 28: MISCELLANEOUS PROVISIONS

- 28.1 The Contract shall be governed by the laws of the State of Missouri.

- 28.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other; except, however, the Owner reserves the right to assign the Contract in whole or in part to any municipality or governmental unit having jurisdiction of the Project site in accordance with the laws of the State of the Project location which relate to Industrial Revenue Bonds. The Contractor shall not assign any moneys due or to become due to him hereunder without the previous consent of the Owner.
- 28.3 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner or the Designer, shall constitute a waiver of any right or duty afforded them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- 28.4 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### ARTICLE 29: PAYMENTS

- 29.1 The total amount due under the Contract is established in the Agreement, and shall be changed only by the provisions of Article 8 of the General Conditions.
- 29.2 Upon completion of all Work and acceptance by the Owner, the Contractor shall submit a request for payment, supported by such data substantiating the Contractor's right to payment as the Owner may require (as well as all other updated information described in Special Conditions). All requests for payment shall be accompanied by Owner's form "Waiver of Lien and Release of Rights". Request for final payment is due within ninety days of project completion.
- 29.3 When the price for all or a portion of the Work is based on the Contractor's actual cost of performing such work, the Contractor shall submit a request for payment showing in complete detail all monies paid out or cost incurred by him on account of the cost of the work for which he is to be reimbursed, and the amount of the fee due, together with payrolls for all labor, and all receipted bills for which payment has been made.
- 29.4 When the price for the Work is based on a fixed amount, the contractor and the Owner shall agree upon a schedule of values of the various portions of the Work before work begins. This schedule shall include quantities and unit prices where required by the Owner, and shall aggregate the full Contract Price so as to facilitate payments to Subcontractors. Each item in the schedule of values shall be shown at cost without any share of overhead and profit. Cost of all General Conditions, overhead, and profit shall be shown as separate items in the schedule of values. The schedule may be used as the basis for subsequent adjustments to the contract amount, as well as the basis for the Contractor's request for payment.
- 29.5 For projects exceeding thirty days duration, the Contractor may, at his option, request partial payments. Requests may be submitted no more frequently than monthly and shall be submitted prior to the 25th day of the month. In such cases, a statement as described above, complete with receipts and payrolls shall accompany each request not previously submitted
- 29.6 Ten percent (10%) of each progress payment shall be retained by the Owner until Final Completion of all work and acceptance by the Owner. The Contractor, at his option, may retain a portion of payments due to Sub-Contractors to the same extent as those held by the Owner to him. In addition, the following procedures regarding retainage shall apply:

- 29.6.1 In lieu of a retainage, the Contractor may provide Certificates of deposit drawn and issued by a national banking association located in Missouri or by any banking corporation incorporated pursuant to the laws of Missouri; and mutually agreeable to the Owner and the Contractor or subcontractor, in the amount of the retainage released. If the letter of credit is not renewed at least sixty days before the expiration of the letter of credit, the Owner may draw upon the letter of credit regardless of the Contractor's or Subcontractor's performance for an amount equal to or no greater than the value of the amount of work remaining to be performed by the Contractor or Subcontractor. Or
- 29.6.2 Contractor may furnish a retainage bond naming the owner as obligee issued by any surety company authorized to issue surety bonds in Missouri in the amount of the retainage released; or
- 29.6.3 Contractor may furnish an irrevocable and unconditional letter of credit in favor of the owner, issued by a national banking association located in this state or by any banking corporation incorporated pursuant to the laws of this state, in the amount of the retainage released.
- 29.6.4 The contractor shall be entitled to receive, in all events, all interest and income earned on any securities deposited by the contractor in substitution for retainage.
- 29.6.5 Contractor shall not withhold from any subcontractor any retainage in excess of the retainage withheld from the contractor by the owner for the subcontractor's work, unless the subcontractor's performance is not in accordance with the terms of the subcontract, in which case, subject to the terms of the subcontract, the contractor may retain additional sums to ensure the subcontractor's satisfactory performance of the subcontract.
- 29.6.6 If it is determined that a Subcontractor's performance has been satisfactorily completed and the Subcontractor can be released prior to substantial completion of the entire project without risk to the Owner involving the Subcontractor's work, the Contractor shall request such adjustment in retainage, if any, from the Owner as necessary to enable the Contractor to pay the Subcontractor in full, and the Owner shall as part of the next contractual payment cycle release the Subcontractor's retainage to the Contractor, who shall in turn as part of the next contractual payment cycle release such retainage as is due the Subcontractor.
- 29.6.7 Within thirty days of the project reaching substantial completion, all retainage or substitute security shall be released by the Owner to the Contractor less an amount equal to one hundred fifty percent of the costs to complete any remaining items. Upon receipt of such retainage from the Owner, the contractor shall within seven days release to each subcontractor that Subcontractor's share of the retainage. With the issuance of the Certificate of Substantial Completion, the Owner will issue a list of all outstanding issues, together with his estimate to complete same.
- 29.7 All requests for payment must reference Owner's contract number (found in upper right hand corner of contract), and shall be mailed to Crown Center, Accounts Payable, P.O. Box 411435, Kansas City, Missouri 64141-1435. Payments will be mailed to the Contractor within thirty days of receipt of properly submitted request.
- 29.8 The Owner shall pay only for materials that have been incorporated into the project or stored on the project site except under the following conditions :
- 29.8.1 Contractor shall give Owner 30 days written notice of intent to bill for materials not stored on the project site. This notice shall include a full description of the materials in question, and shall describe in detail the safeguards necessary to protect Owner's interests;
- 29.8.2 Contractor shall furnish bill of sale or other documentation to substantiate Owner's title to the materials;
- 29.8.3 Contractor shall furnish proof of insurance for material stored off-site;
- 29.8.4 Contractor shall allow Owner to inspect materials during normal business hours;

- 29.8.5 Owner shall authorize in writing permission to store materials off site, and to permit Contractor to bill for same;
- 29.9 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Payment Request, whether incorporated in the Project or not, will pass to the Owner upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article as "liens", and that no Work, materials or equipment covered by a Payment Request will have been acquired by the Contractor, or by any other person. All requests for partial and final payment shall be accompanied by Owner's form "Waiver of Lien and Release of Rights".
- 29.10 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any work not accordance with the Contract Documents.
- 29.11 The Owner may decline to approve any Payment Request, or he may nullify in whole or part any previous Payment Request because of subsequently discovered evidence or subsequent inspections, due to any reason listed below. When the grounds for withholding payment are removed, payment shall be made accordingly.
- 29.11.1 third party claims filed or reasonable evidence indicating probable filing of such claims
  - 29.11.2 failure of the contractor to make payments properly to subcontractors or suppliers for labor, defective work not remedied
  - 29.11.3 materials or equipment
  - 29.11.4 reasonable doubt that the work can be completed for the unpaid balance of the contract sum
  - 29.11.5 damage to the Owner or another contractor
  - 29.11.6 reasonable indication that the work will not be completed within the contract time
  - 29.11.7 unsatisfactory prosecution of the work by the contractor
  - 29.11.8 incomplete or incorrect reports and records submitted under the condition of the Special Conditions
  - 29.11.9 violation of other condition of this contract
- 29.12 If the Owner should fail to pay the Contractor or should fail to give reason for his non-payment under the conditions listed above, then the Contractor may, upon ten additional days' written notice to the Owner, suspend without prejudice all work until payment of the amount has been received.
- 29.13 When the Contractor considers that the Work or a designated portion thereof, is substantially complete, he shall so notify the Owner. When the Owner has inspected the work, he shall prepare a Certificate of Substantial Completion, which shall state the responsibilities of the Owner and Contractor for security, maintenance, heat, insurance, etc., and shall state those items not in conformance with the contract documents and the time for correction. 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.
- 29.14 Neither the final payment nor the retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner might in any way be responsible, have been paid; (2) Surety's consent to release of final payment; (3) Lien releases from all parties from whom the Contractor has purchased services and/or materials. If any Subcontractor or Material Supplier refused to furnish a release or waiver required by the Owner, the contractor shall furnish a bond satisfactory to the Owner to indemnify against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all money that the latter may be compelled to pay in discharging such liens, including all costs and reasonable attorney's fees.

- 29.15 The issuance of final payment will constitute a waiver of all claims by the Owner except those arising from:
- 29.15.1 unsettled liens
  - 29.15.2 faulty or defective work appearing after substantial completion
  - 29.15.3 failure of the work to comply with the requirements of the Contract Documents
  - 29.15.4 terms of any special guarantees required by the Contract Documents
- 29.16 The acceptance of final payment shall constitute a waiver of all claims by the contractor except those previously made in writing and still unsettled.