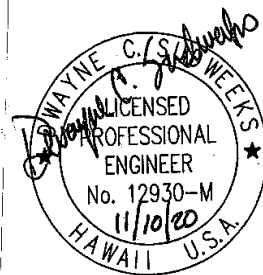


**SPECIFICATIONS**  
**FOR**  
**LDS Hauula Mauka Chapel**  
**54-208 Hauula Homestead Road**  
**Hauula, HI 96717**  
**Property #533 0716**

November 2020



Prepared  
by  
Engineered Systems Associates, Inc.  
1355 East Center  
Pocatello, Idaho 83201  
208-233-0501

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# INVITATION TO BID

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**1. CONTRACTORS INVITED TO BID THE PROJECT:**

Custom Mechanical-Kurt Giles (801)-296-2600, [Kgilescmd@yahoo.com](mailto:Kgilescmd@yahoo.com)

JM Mechanical-Max Winward (435)-563-6267, [max@jmmech.com](mailto:max@jmmech.com)

Economy Plumbing- Troy Sakamoto (808)-600-8349, [troy@economyplumbingac.com](mailto:troy@economyplumbingac.com)

RMI Mechanical (808)422-5454, [info@rmimechanical.com](mailto:info@rmimechanical.com)

Alakai Mechanical Corp- Rapph Inowuye (808)-834-1085, [rinouye@alakaimechanical.com](mailto:rinouye@alakaimechanical.com)

**2. PROJECT:**

LDS Hauula Mauka Chapel

**3. LOCATION:**

54-208 Hauula Homestead Road

Hauula , HI 96717

**4. OWNER:**

Corporation of the Presiding Bishop of  
The Church of Jesus Christ of Latter-day Saints,  
A Utah Corporation Sole  
50 East North Temple Street  
Salt Lake City, Utah 84150

**5. CONSULTANT:**

Dwayne Sudweeks  
Engineered Systems Associates, Inc.  
1355 East Center  
Pocatello, Idaho 83201

**6. DESCRIPTION OF PROJECT:**

**Replace Chapel & Cultural hall air handlers and condensing units and associated work.**

**7. TYPE OF BID:** Bids will be on a lump-sum basis. Segregated bids will not be accepted.

**8. TIME OF SUBSTANTIAL COMPLETION:** The time limit for substantial completion of this work will be (180) calendar days and will be as noted in the Agreement.

**9. PRE-BID WALK-THRU:** There will be a pre-bid walk-thru of the project at the building site 54-208 Hauula Homestead Road, Hauula, HI 967172 on November16, 2020 at 1:00 PM. Attendance is highly encouraged.

**10. BID OPENING:** The remote Bid Opening time will be at 1:00 PM (Hawaii Standard Time) on December 2, 2020. (Please submit proposals by mail or in person. Faxed proposals cannot be considered.)

**11. BIDDING DOCUMENTS:**

A. Bidding Documents are available to invited Contractors.

**12. BIDDER'S QUALIFICATIONS:** Bidding by the Contractors will be by invitation only.

**13. OWNER'S RIGHT TO REJECT BIDS:** Owner reserves the right to reject any or all bids and to waive any irregularity therein.

END OF DOCUMENT

# INSTRUCTIONS TO BIDDERS (U.S.)

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## 1. DOCUMENTS:

- A. Bidding Documents include Bidding Requirements and proposed Contract Documents. Proposed Contract Documents consist of:
  - 1) Agreement Between Owner and Contractor for Small Project (U.S.)
  - 2) Other documents included by reference
  - 3) Addenda.
- B. Bidding Requirements are those documents identified as such in proposed Project Manual.
- C. Addenda are written or graphic documents issued prior to execution of the Contract which modify or interpret the Bidding Documents. They become part of the Contract Documents as noted in the Agreement Between Owner and Contractor for Small Project (U.S.) upon execution of the Agreement by Owner.

## 2. BIDDER'S REPRESENTATIONS:

- A. By submitting a bid proposal, bidder represents that
  - 1) Bidder has carefully studied and compared Bidding Documents with each other. Bidder understands the Bidding Documents and the bid is fully in accordance with the requirements of those documents,
  - 2) Bidder has thoroughly examined the site and any building located thereon, has become familiar with local conditions which might directly or indirectly affect contract work, and has correlated its personal observations with requirements of proposed Contract Documents, and
  - 3) Bid is based on materials, equipment, and systems required by Bidding Documents without exception.

## 3. BIDDING DOCUMENTS:

- A. Copies
  - 1) Owner will provide the Bidding Documents as set forth in the Invitation to Bid.
  - 2) Partial sets of Bidding Documents will not be issued.
- B. Interpretation or Correction of Bidding Documents
  - 1) Bidders will request interpretation or correction of any apparent errors, discrepancies, and omissions in the Bidding Documents.
  - 2) Corrections or changes to Bidding Documents will be made by written Addenda.
- C. Substitutions and Equal Products
  - 1) Equal products may be approved upon compliance with Contract Document requirements.
  - 2) Base bid only on materials, equipment, systems, suppliers or performance qualities specified in the Bidding documents.
  - 3) Where a specified product is identified as a "quality standard", products of other

manufacturers that meet the performance, properties, and characteristics of the specified "quality standard" may be used without specific approval as a substitute.

- D. Addenda. Addenda will be sent to bidders and to locations where Bidding Documents are on file no later than one week prior to bid opening or by fax no later than 48 hours prior to bid opening.

#### **4. BIDDING PROCEDURES:**

- A. Form and Style of Bids
- 1) Use Owner's Bid Form.
  - 2) Bid will be complete and executed by authorized representative of Bidder.
  - 3) Do not delete from or add to the information requested on bid form.
- B. Submission of Bids
- 1) Submit bid in sealed opaque envelope containing only bid form.
  - 2) It is bidder's sole responsibility to see that its bid is received at or before the specified time. Bids received after specified bid opening time may be returned to bidders unopened.
  - 3) No oral, facsimile transmitted, telegraphic, or telephonic bids, modifications, or cancellations will be considered.
- C. Modification or Withdrawal of Bid
- 1) Bidder guarantees there will be no revisions or withdrawal of bid amount for 45 days after bid opening.
  - 2) Prior to bid opening, bidders may withdraw bid by written request or by reclaiming bid envelope.
  - 3) Prior to bid opening, bidder may mark and sign on the sealed envelope that bidder acknowledges any or all Addenda.

#### **5. CONSIDERATION OF BIDS:**

- A. Opening Of Bids - See Invitation to Bid.
- B. Acceptance Of Bid
- 1) No bidder will consider itself under contract after opening and reading of bids until Owner accepts Contractor's Bid Proposal by executing same.
  - 2) Bidder's past performance, organization, subcontractor selection, equipment, and ability to perform and complete its contract in manner and within time specified, together with amount of bid, will be elements considered in award of contract.

#### **6. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR:**

- A. Agreement form will be "Agreement Between Owner and Contractor for Small Project (U.S.)" provided by Owner.

#### **7. MISCELLANEOUS:**

- A. Pre-Bid Conference. A pre-bid conference may be held at the building site 54-208 Hauula Homestead Road, Hauula, HI 96717 on November 16, 2020 at 1:00 PM

END OF DOCUMENT

# BID FORM

FOR GENERAL CONTRACT WORK (U.S.)

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**PROJECT IDENTIFICATION:**

Hauula Mauka Chapel

**OWNER:**

The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole ("Owner")

**CONSULTANT:**

Dwayne Sudweeks  
Engineered Systems Associates, Inc.  
1355 E Center St.  
Pocatello, ID 83201

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**BID****1. In submitting this Bid, Bidder represents that:**

- a. If this Bid is accepted, Bidder will enter into an agreement with Owner to perform and furnish the Work described in the Bidding Documents for the Bid Price and within the Time of Substantial Completion indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
- b. Bidder has carefully examined the Bidding Documents consisting of the Project Manual containing the Bidding Requirements, the Conditions of the Contract, and the Specifications, entitled Hauula Mauka Chapel the Drawings entitled S-1, ME-1, ME-2, ME-3, ME-4, ME-5 and dated November 16, 2020, and addenda numbers \_\_\_\_\_.
- c. Bidder has examined the site of the work, existing conditions, and all other conditions affecting the work on the above-named Project.
- d. Bidder has carefully correlated the information known to Bidder and information and observations obtained from visits to the site with the Bidding Documents.
- e. Bidder is familiar with federal, State, and local laws and regulations applicable to Project.
- f. Bidder guarantees there will be no revisions or withdrawal of bid amount for forty-five (45) days after the bid opening.

**2. Bids**

- a. **Base Bid:** Bidder hereby proposes to furnish all materials, labor, equipment, tools, transportations, services, licenses, fees, permits, etc., required by said documents to complete the Work described by the Contract Documents for the lump-sum of: \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_).

**3. Bidder agrees to achieve substantial completion of the Work within the number of days indicated in the Invitation to Bid.**

RESPECTFULLY SUBMITTED:

	_____ Signature	
	_____ Printed name	
	_____ Title	
	_____ Company name	
	_____ Business Address	
_____ Date	_____ City, State, and Zip Code	
_____ License No.	_____ Telephone	_____ Fax
	_____ Contact Email Address	



# BID MODIFICATION

Project Name: Hauula Mauka Chapel  
Project Number: 5330718200101101  
Bid Opening Date: December 2 2020  
Bid Opening Time: 1:00 PM  
Bid Location: Scott Lystrup  
Project Manager  
1500 Northridge Rd.  
Wanship, Utah 84017  
Email: lystruprs@ldschurch.org

*This document is equivalent to the Sealed Bid Envelope and as such becomes part of the submitted Sealed Bid when e-mailed before the time of the Bid Opening. Document will have the e-mail date and stamp on the sheet, but it is the Contractor's Responsibility to e-mail the document in sufficient time to be received before the bids are opened. When using this form to make any alterations, the bidder shall acknowledge the number of addenda on the form where indicated.*

Construction Company's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Acknowledgment of Addenda numbers: \_\_\_\_\_

Adding \_\_\_\_\_ (\$ \_\_\_\_\_)

Or

Subtracting \_\_\_\_\_ (\$ \_\_\_\_\_)

**These changes are to the sum printed and written on the Bid Form in Sealed Envelope.**

*Person signing is authorized agent of the Company:*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title or Position

*Date and time will be as printed on the e-mail. E-mail must be received before the Bid Opening or this document will be non-responsive. It is the Contractor's responsibility to have this form received before the bids are closed.*

**CONSTRUCTION MATERIAL ASBESTOS STATEMENT (U.S.)****PROJECTS FOR:  
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,  
a Utah corporation sole**

Building Name: Hauula Mauka Chapel

Building Plan Type: Install Chapel AC

Building Address: 54-208 Hauula Homestead Road, Hauula HI 96717

Building Owner: The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole.

Project Number: 533071820010101

Completion Date: \_\_\_\_\_

As PROJECT CONSULTANT and principal in charge, based on my best knowledge, information, inspection, and belief; I certify that on the above referenced Project, no asbestos-containing building materials were specified in the construction documents or given approval in shop drawings or submittals.

\_\_\_\_\_  
Project Consultant and Principal in Charge (signature)      Date

\_\_\_\_\_  
Company Name

As GENERAL CONTRACTOR in charge of construction; based on my best knowledge, information, inspection, and belief; I affirm that on the above-referenced Project, no asbestos-containing building materials were used in the construction.

\_\_\_\_\_  
General Contractor (signature)      Date

\_\_\_\_\_  
Company Name

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR A FIXED SUM (U.S.)**

The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole ("Owner") and \_\_\_\_\_ ("Contractor") hereby enter into this *Agreement Between Owner and Contractor for a Fixed Sum (U.S.)* ("Agreement") and agree as follows:

1. **Property/Project.**

Property/Project Number:  
Property Address ("Project Site"):

Project Type:  
Project Name ("Project"):

Stake Name:

2. **Scope of the Work.** Contractor will furnish all labor, materials, equipment, construction, and services necessary to complete the Work in accordance with the Contract Documents.

3. **Contract Documents.**

- a. The Contract Documents consist of:
  - 1) This Agreement;
  - 2) The General Conditions for a Fixed Sum (U.S.), the Supplementary Conditions for a Fixed Sum (U.S.), and the Specifications (Divisions 01 through 49) contained in the Project Manual entitled \_\_\_\_\_, dated \_\_\_\_\_ and prepared by \_\_\_\_\_ ("Architect");
  - 3) The Drawings prepared by Architect entitled \_\_\_\_\_, sheet numbers \_\_\_\_\_, dated \_\_\_\_\_;
  - 4) Addendum No. \_\_\_\_\_ dated \_\_\_\_\_; and
  - 5) All Modifications to the Contract Documents.
- b. The Contract Documents are incorporated into this Agreement by reference as if fully set forth herein.
- c. The definitions set forth in the General Conditions for a Fixed Sum (U.S.) will apply to the Contract Documents.
- d. The Contract Documents contain the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.
- e. Modifications or other amendments to the Contract Documents must be in writing and as provided in the General Conditions for a Fixed Sum (U.S.).

4. **Time of Commencement and Substantial Completion.**

- a. Contractor will commence the Work on the date for commencement set forth in the Written Notice to proceed from Owner to Contractor.
- b. Contractor will achieve Substantial Completion and have the Work ready for Owner's inspection no later than \_\_\_\_\_ (\_\_\_\_\_) days from the date of commencement set forth in the Written Notice to proceed from Owner to Contractor, as adjusted in accordance with the Contract Documents.
- c. Time is of the essence.

5. **Contract Sum.**

- a. Owner will pay Contractor for performance of Contractor's obligations under the Contract Documents the Contract Sum in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents.
- b. Owner will make payments to Contractor in accordance with the Contract Documents.

6. **Independent Contractor Relationship.** Contractor is an independent contractor and is not the agent or employee of Owner.

7. **Assignment.** Neither party to this Agreement will assign any right or obligation hereunder without the prior written consent of the other, which consent may be granted or withheld in such party's absolute discretion.

Contractor will not assign moneys due or to become due to Contractor hereunder, nor will Contractor pledge the credit of Owner or bind Owner to any third party.

8. **Notice.** The parties designate the addresses, facsimile numbers, and email addresses as set forth in the signature blocks below to be used for sending Written Notice to the other party:
9. **Effective Date.** The effective date of this Agreement is the date indicated by the Owner's signature.

**OWNER:**

The Church of Jesus Christ of Latter-day Saints,  
a Utah corporation sole

Signature:

Print Name:

Title:

Address:

Telephone No:

Facsimile No:

Email:

Effective Date:

Reviewed By:

**CONTRACTOR:**

(company)

Signature:

Print Name:

Title:

Address:

Telephone No:

Facsimile No:

Email:

Fed. I.D. or SSN:

License No:

Date Signed:

# GENERAL CONDITIONS

## For a Fixed Sum (U.S.)

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## SECTION 1 - GENERAL PROVISIONS

### 1.1 DEFINITIONS

- A. Adverse Weather: weather conditions that are seasonally abnormal and could not have been reasonably anticipated.
- B. Agreement: the document entitled "Agreement Between Owner and Contractor for a Fixed Sum (U.S.), executed by Owner and Contractor for performance of the Work.
- C. Architect: the entity identified as such in the Agreement.
- D. Change In The Work: a modification to the requirements of the Contract Documents or a delay in Substantial Completion resulting from an instruction from Owner or Architect to Contractor or from another event or circumstance.
- E. Change Order: a written instrument prepared by Architect and signed by Owner, Contractor, and Architect stating their agreement upon the following: (1) the occurrence of a Change in the Work; (2) the amount of the adjustment, if any, in the Contract Sum as a result of the Change in the Work; and (3) the extent of the adjustment, if any, in the Contract Time as a result of the Change in the Work.
- F. Construction Change Directive: a written order prepared by Architect and signed by Architect and Owner which: (1) orders a Change in the Work if the terms of a Change Order cannot be agreed upon prior to performance of a Change in the Work described in Section 7.1 or after occurrence of an event or circumstance described in Section 7.2; and (2) states a proposed basis for adjustment, if any, in the Contract Sum, the Contract Time, or both, resulting from the Change in the Work.
- G. Contract Documents: the documents identified as such in the Agreement.
- H. Contract Sum: the total amount set forth in the Agreement payable by Owner to Contractor for performance of the Work.
- I. Contract Time: the period of time set forth in the Agreement for the Substantial Completion of the Work.
- J. Contractor: the entity identified as such in the Agreement.
- K. Day: calendar day unless otherwise specifically defined.
- L. Direct Costs: actual costs for labor, materials, equipment, insurance, bonds, subcontract costs and onsite supervision relating to the Project. They do not include labor costs for project managers or other off-site administration.
- M. Drawings: the documents identified as such in the Agreement.
- N. Field Change: a written order prepared by Architect and signed by Architect and Contractor for a minor Change in the Work consistent with the general intent of the Contract Documents costing \$1,000 or less, resulting in no time extension, and which is necessary to avoid delaying the Work.
- O. Modification: a written amendment to the Contract Documents in the form of a:
  - 1. Change Order;
  - 2. Construction Change Directive; or
  - 3. Field Change.
- P. Owner: the entity identified as such in the Agreement.
- Q. Project: the total construction designed by Architect of which the Work performed under the Contract Documents may be the whole or a part.

- R. Product Data: standard illustrations, schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate details regarding materials or equipment to be used in the Work, or the manner of installation, operation, or maintenance of such materials or equipment.
- S. Project Manual: the document identified as such in the Agreement.
- T. Samples And Mock-ups: physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- U. Shop Drawings: drawings, diagrams, illustrations, schedules, performance charts, fabrication and installation drawings, setting diagrams, patterns, templates, and other data which illustrate some portion of the Work and confirm dimensions and conformance to the Contract Documents specially prepared by Contractor or any Subcontractor, manufacturer, supplier, or distributor.
- V. Specifications: the documents identified as such in the Agreement.
- W. Subcontractor: any entity supplying labor, materials, equipment, construction or services for the Work under separate contract with Contractor or any other Subcontractor.
- X. Submittals: Shop Drawings, Product Data, Samples and Mock-ups and any other documents or items furnished by Contractor or its Subcontractors to Owner or Architect to demonstrate how any portion of the Work will be accomplished or the type of materials or products that will be used in the Work.
- Y. Substantial Completion: Completion of the Work to a point where Owner can use the Work for its intended purposes. The date of Substantial Completion is the date certified as such by Architect in accordance with the Contract Documents.
- Z. Work: all labor, materials, equipment, construction, and services required by the Contract Documents.
- AA. Written Notice: notice in writing given from one party to the other at the addresses or facsimile numbers listed in the Agreement, or at such other addresses or facsimile numbers as the parties will designate from time to time by Written Notice, and will be effective at the earliest of:
  1. The date of personal delivery to the other party with signed acknowledgment of receipt; or
  2. The date sent by facsimile transmission to the other party provided receipt of the facsimile is verified by an electronic confirmation report by the party sending the facsimile transmission and further provided that a confirmation copy is sent to the other party by courier or by registered or certified mail within twenty-four (24) hours after the time and date of the facsimile transmission; or
  3. The date of receipt by the other party as stated on the return receipt if sent by registered or certified mail, or by courier.

## 1.2 CORRELATION AND INTENT OF CONTRACT DOCUMENTS

- A. The intent of the Contract Documents is to require Contractor to provide all labor, materials, equipment, construction, and services necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any one will be as binding as if required by all. Contractor will perform the Work in accordance with the requirements expressly set forth in or reasonably inferable from the Contract Documents.
- B. The organization of the Contract Documents is not intended to control Contractor in dividing the Work among Subcontractors or to establish the extent of the Work to be performed by any trade.
- C. Words used in the Contract Documents that have well known technical or trade meanings are used therein in accordance with such recognized meanings.
- D. In the interest of brevity, the Contract Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## 1.3 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

The Drawings, the Project Manual, and copies thereof are the property of Owner. Contractor will not use these documents on any other project. Contractor may retain one copy of the Drawings and the Project Manual as a contract record set and will return or destroy all remaining copies following final completion of the Work.

## 1.4 PUBLIC STATEMENTS REGARDING PROJECT

Contractor will not make any statements or provide any information to the media about the Project without the prior written consent of Owner. If Contractor receives any requests for information from media, Contractor will refer such requests to Owner.

## 1.5 OWNERSHIP AND USE OF RENDERINGS AND PHOTOGRAPHS

Renderings representing the Work are the property of Owner. All photographs of the Work, whether taken during performance of the Work or at completion, are the property of the Owner. The Owner reserves all rights including copyrights to renderings and photographs of the Work. No renderings or photographs shall be used or distributed without written consent of the Owner.

## **1.6 NO COMMERCIAL USE OF TRANSACTION OR RELATIONSHIP**

Without the prior written consent of Owner, which Owner may grant or withhold in its sole discretion, neither Contractor nor Contractor's affiliates, officers, directors, agents, representatives, shareholders, members, Subcontractors, Sub-subcontractors or employees shall make any private commercial use of their relationship to Owner or the Project, including, without limitation:

- A. By referring to this Agreement, Owner, or the Project verbally or in any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials except as may be necessary for Contractor to perform Contractor's obligations under the terms of this Agreement;
- B. By using or allowing the use of any photographs of the Project or any part thereof, or of any service marks, trademarks or trade names or other intellectual property now or which may hereafter be associated with, owned by or licensed by Owner in connection with any service or product; or
- C. By contracting with or receiving money or anything of value from any person or commercial entity to facilitate such person or entity obtaining any type of commercial identification, advertising or visibility in connection with the Project.

Notwithstanding the foregoing, Contractor may include a reference to Owner and the services and equipment provided under this Agreement in a professional résumé or other similar listing of Contractor's references without seeking Owner's written consent in each instance; provided, that such reference to Owner, the services and equipment is included with at least several other similar references and is given no more prominence than such other references.

## **1.7 CONFIDENTIALITY / PROPERTY RIGHTS**

- A. Owner will retain ownership and intellectual property rights in all plans, designs, drawings, documents, concepts, and materials provided by or on behalf of Owner to Contractor and to all work products of Contractor for or relative to Work performed under this Agreement, such products, services, and Work of Contractor constituting works made for hire. Contractor will not reuse any portions of such items provided by Owner or developed by Contractor for Owner pursuant to this Agreement, or disclose any such items to any third party without the prior written consent of Owner. Owner may withhold its consent in its' absolute discretion.
- B. In addition, Contractor shall ensure that Contractor, Subcontractors, and the employees, agents and representatives of Contractor and its Subcontractors maintain in strict confidence, and shall use and disclose only as authorized by Owner all Confidential Information of Owner that Contractor receives in connection with the performance of this Agreement. Notwithstanding the foregoing, Contractor may use and disclose any information to the extent required by an order of any court or governmental authority, but only after it has notified Owner and Owner has had an opportunity to obtain reasonable protection for such information in connection with such disclosure. For purposes of this Agreement, "Confidential Information" means:
  - 1. The name or address of any affiliate, customer or contractor of Owner or any information concerning the transactions of any such person with Owner;
  - 2. Any information relating to contracts, agreements, business plans, budgets or other financial information of Owner to the extent such information has not been made available to the public by the Owner; and
  - 3. Any other information that is marked or noted as confidential by the Owner at the time of its disclosure.

## **1.8 COMPLY WITH INTELLECTUAL PROPERTY RIGHTS OF OTHERS**

Contractor represents and warrants that no Work (with its means, methods, goods, and services attendant thereto), provided to Owner will infringe or violate any right of any third party and that Owner may use and exploit such Work, means, methods, goods, and services without liability or obligation to any person or entity (specifically and without limitation, such Work, means, methods, goods, and services will not violate rights under any patent, copyright, trademark, or other intellectual property right or application for the same).

## **SECTION 2 - OWNER**

### **2.1 OWNER'S DESIGNATED REPRESENTATIVE**

Owner will designate in writing a representative who will have express authority to bind Owner with respect to all matters requiring Owner's approval or authorization.

### **2.2 INFORMATION AND SERVICES REQUIRED OF OWNER**

- A. Owner will be responsible for establishment of property lines and benchmarks for grading.
- B. Owner will furnish to Contractor any information or services it is required to furnish under the Contract Documents with reasonable promptness to avoid delay in the orderly progress of the Work.
- C. Owner will furnish to Contractor a reasonable number of copies of the Drawings, the Project Manual, and the Addenda.

### **2.3 OWNER'S RIGHT TO INSPECT THE WORK**

Owner and its representatives will have the right to inspect any portion of the Work wherever located at any time.

### **2.4 OWNER'S RIGHT TO STOP THE WORK**

If Contractor fails to carry out the Work in accordance with the Contract Documents or fails to correct Work which is not in accordance with the Contract Documents in a timely manner, Owner may order Contractor in writing to stop the Work, or any portion thereof, until the cause for that order has been eliminated.

## **SECTION 3 - CONTRACTOR**

### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

- A. By executing the Agreement, Contractor represents that it has visited the Project site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its own observations with the requirements of the Contract Documents.
- B. Contractor will carefully review and compare the Contract Documents and any other available information relating to the Project prior to commencing and during performance of each portion of the Work and will immediately report to Architect any errors, inconsistencies, and omissions it discovers.
- C. Should Contractor or any of its Subcontractors become aware of any question regarding the meaning or intent of any part of the Contract Documents prior to commencing that portion of the Work about which there is a question, Contractor will request an interpretation or clarification from Architect before proceeding. Contractor proceeds at its own risk if it proceeds with the Work without first making such a request and receiving an interpretation or clarification from Architect. If neither Contractor nor its Subcontractors become aware of the question until after work on the relevant portion of the Work has commenced, then the following precedence will govern for purposes of determining whether resolution of the question constitutes a Change in the Work:
  - 1. The Agreement takes precedence over all other Contract Documents.
  - 2. The Supplementary Conditions take precedence over the General Conditions.
  - 3. The General Conditions and Supplementary Conditions take precedence over the Drawings and the Specifications.
  - 4. An Addendum or a Modification takes precedence over the document(s) modified by the Addendum or Modification.
  - 5. The Specifications take precedence over the Drawings.
  - 6. Within the Drawings, larger scale drawings take precedence over smaller scale drawings, figured dimensions over scaled dimensions, and noted materials over graphic indications.
- D. Contractor will give Architect notice of any additional drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work, sufficiently in advance of the need for information so as not to delay the Work.
- E. It is not Contractor's responsibility to ascertain that the Contract Documents are in accordance with requirements of applicable laws, statutes, ordinances, building codes, rules and regulations. However, if Contractor observes that portions of the Contract Documents are at variance with those requirements, Contractor will immediately notify Architect in writing. Contractor will not proceed unless Owner and/or Architect effects Modifications to the Contract Documents required for compliance with such requirements. Contractor will be fully responsible for any work knowingly performed contrary to such requirements and will fully indemnify Owner against loss and bear all costs and penalties arising therefrom.
- F. Contractor will take field measurements and verify field conditions and will compare such field measurements and conditions and other information known to Contractor with the Contract Documents before ordering any materials or commencing construction activities. Contractor will immediately report errors, inconsistencies, and omissions that it discovers to Architect. If Contractor orders materials or commences construction activities before taking field measurements and verifying field conditions, Contractor will not be entitled to any compensation for additional costs to Contractor resulting from field measurements or conditions different from those anticipated by Contractor which would have been avoided had Contractor taken field measurements and verified field conditions prior to ordering the materials or commencing construction activities.
- G. If site conditions indicated in the Contract Documents or other information provided by Owner or Architect to Contractor differ materially from those Contractor encounters in performance of the Work, Contractor will immediately notify Architect in writing of such differing site conditions.
- H. Where the Contract Documents require the Contractor to provide professional services for architecture or engineering, the Contractor shall cause such services to be performed by appropriately licensed professionals.

### **3.2 SUPERVISION OF CONSTRUCTION PROCEDURES**

- A. Contractor will supervise and direct the Work. Contractor will be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work. All loss, damage, liability, or cost of correcting defective work arising from the use of any construction means, methods, techniques, sequences or procedures will be borne by Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless Contractor has given timely notice to Owner and Architect in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and Owner has then instructed Contractor in writing to proceed at Owner's risk.
- B. Contractor will utilize its best skill, efforts, and judgment to provide efficient business administration and supervision, to furnish at all times an adequate supply of workers and materials, and to perform the Work in an expeditious and economical manner consistent with the interests of Owner.
- C. Contractor will be responsible for:
  - 1. The proper observance of property lines and set back requirements as shown in the Contract Documents;



2. The location and layout of the Work as shown in the Contract Documents with respect to the position of the Work on the property and the elevation of the Work in relation to grade; and
  3. Setting and maintaining construction stakes.
- D. Contractor will be responsible to Owner for the acts and omissions of its employees and Subcontractors as well as persons either directly or indirectly employed by Subcontractors.
  - E. Contractor will not be relieved of its obligation to perform the Work in accordance with the Contract Documents as a result of any tests, inspections, or approvals by Owner, Architect or their consultants.
  - F. Contractor will be responsible for inspection of portions of the Work already completed to determine that such portions are in proper condition to receive subsequent portions of the Work.
  - G. Contractor recognizes that the Project site and the surrounding area is frequently visited by the public and is important to Owner's image and function and will maintain the premises free from debris and waste materials resulting from Construction. At the completion of Construction, Contractor shall promptly remove construction equipment, tools, surplus materials, waste materials and debris.

### **3.3 LABOR AND MATERIALS**

- A. Unless otherwise provided in the Contract Documents, Contractor will provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
- B. Contractor will at all times enforce strict discipline and good order among those performing the Work and will not permit employment of any unfit person or anyone not skilled in the tasks assigned to them.
- C. Contractor is fully responsible for the Project and all materials and work connected therewith until Owner has accepted the Work in writing. Contractor will replace or repair at its own expense any materials or work damaged or stolen, regardless of whether it has received payment for such work or materials from the Owner.
- D. Contractor will remedy all damage or loss to any property caused in whole or in part by Contractor, any Subcontractor, or by anyone for whose acts any of them may be liable.
- E. Contractor will be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. Architect may require Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of Architect, would lead to a reasonable certainty that any material used, or proposed to be used, in the work meets the requirements of the Contract Documents. All such data will be furnished at Contractor's expense. This provision will not require Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at Contractor's expense.
- F. Contractor will coordinate and supervise the work performed by Subcontractors so that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. Contractor and all Subcontractors will at all times afford each trade, any separate contractor, or Owner, reasonable opportunity for the installation of Work and the storage of materials.
- G. Contractor warrants to Owner that the materials and equipment furnished for the Work will be new unless otherwise specified by the Contract Documents, and that the Work will be free from defects, and will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the discretion of Owner. If required by Architect, Contractor will furnish satisfactory evidence as to the kind and quality of the materials and equipment used in performing the Work.
- H. Owner may elect to purchase materials required for the Work. In that event, Contractor will comply with the procedures set forth in the Contract Documents relating to such materials.

### **3.4 COMPLIANCE WITH LAWS**

Contractor will comply with all applicable laws, ordinances, rules, regulations, and orders of any public authorities relating to performance of the Work.

### **3.5 TAXES**

- A. Contractor will pay all sales, use, consumer, payroll, workers compensation, unemployment, old age pension, surtax, and similar taxes assessed in connection with the performance of the Work.
- B. Owner will pay all taxes and assessments on the real property comprising the Project site.

### **3.6 PERMITS AND FEES**

- A. Owner will obtain and pay for all zoning and use permits and permanent easements necessary for completion of the Work.

- B. Contractor will obtain and pay for the building permit, and all other permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.
- C. Contractor will secure any certificates of inspection and of occupancy required by authorities having jurisdiction over the Work. Contractor will deliver these certificates to Architect prior to issuance of the Certificate of Substantial Completion by Architect.

### **3.7 CONTRACTOR'S ON-SITE REPRESENTATIVE**

Contractor will employ a competent representative acceptable to Owner to supervise the performance of the Work. This representative will be designated in writing by Contractor prior to commencement of work and will not be changed prior to final inspection of the Work without prior written consent of Owner. This representative will represent Contractor for all purposes, including communication with Owner.

### **3.8 CONTRACTOR'S CONSTRUCTION SCHEDULES**

- A. Contractor will prepare and submit for Owner's and Architect's information Contractor's construction schedule for the Work in accordance with the requirements of the Contract Documents.
- B. Contractor will prepare and maintain a Submittal schedule which is coordinated with Contractor's construction schedule and sets forth specified times for Architect to review Submittals.

### **3.9 DOCUMENTS AND SUBMITTALS AT THE SITE**

Contractor will keep at the Project site for use by Owner, Architect, or their representatives, a record copy of the Project Manual, the Drawings, all Addenda, and all Modifications. These documents will be maintained in good order and currently marked to record changes and selections made during construction. In addition, Contractor will keep at the Project site one copy of all Submittals.

### **3.10 SUBMITTALS**

- A. Submittals are not Contract Documents and do not alter the requirements of the Contract Documents unless incorporated into the Contract Documents by a Modification.
- B. Contractor will review, approve, and submit to Architect Submittals in accordance with the Contract Documents. By approving Submittals, Contractor represents that it has determined and verified field measurements, field construction criteria, materials, catalog numbers, and similar data, and that it has checked and coordinated each Submittal with the requirements of the Work and of the Contract Documents or will make such determination, verification, check, and coordination prior to commencing the relevant portion of the Work. In reviewing Submittals Architect will be entitled to rely upon Contractor's representation that such information is correct and accurate.
- C. Contractor will inform Architect in writing at the time of submission of any Submittal or portion thereof which deviates from the requirements of the Contract Documents. Contractor will provide Architect with documentation demonstrating to Architect that the Submittal is equal to or better than the specified product or work. Contractor will not be relieved of responsibility for deviations from the requirements of the Contract Documents by Architect's acceptance of a Submittal unless Contractor has informed Architect in writing of the deviation and Architect has incorporated the deviation into the Contract Documents by a Modification.
- D. Contractor will not perform any portions of the Work requiring Submittals until the respective Submittal has been reviewed and accepted in writing by Architect.
- E. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Owner will be entitled to rely upon such certifications, and neither Owner nor Architect will be expected to make any independent examination with respect thereto.
- F. Submittals not required by the Contract Documents may be returned to Contractor without action.

### **3.11 CUTTING AND PATCHING**

Contractor will be responsible for any cutting, fitting, and patching that may be required to complete the Work and make its parts fit together properly.

### **3.12 ACCESS TO WORK**

Contractor will permit Owner, Architect, their representatives and consultants, access to the Work wherever located at any time.

### **3.13 ROYALTIES AND PATENTS**

Contractor will pay all royalties and license fees required by the Work or by Contractor's chosen method of performing the Work. Contractor will defend and hold Owner harmless from all suits or claims for infringement of any patent, license or other intellectual property rights or any loss on account thereof.

### **3.14 INDEMNIFICATION**

- A. Contractor will indemnify and hold harmless Owner and Owner's representatives, employees, agents, architects, and consultants from and against any and all claims, damages, liability, demands, costs, judgments, awards, settlements, causes of action, losses and expenses (collectively "Claims" or "Claim"), including but not limited to attorney fees, consultant fees, expert fees, copy costs, and other expenses, arising out of or resulting from performance of the Work, attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of real or personal property, including loss of use resulting therefrom, except to the extent that such liability arises out of the negligence of Owner, its representatives, agents, and employees. This indemnity includes, without limitation, indemnification of Owner from all losses or injury to Owner's property, except to the extent that such loss or injury arises out of the negligence of Owner, its representatives, agents, and employees. This indemnity applies, without limitation, to include Claims occurring both during performance of the Work and/or subsequent to completion of the Work. In the event that any Claim is caused in part by a party indemnified hereunder, that party will bear the cost of such Claim to the extent it was the cause thereof. In the event that a claimant asserts a Claim for recovery against any party indemnified hereunder, the party indemnified hereunder may tender the defense of such Claim to Contractor. If Contractor rejects such tender of defense and it is later determined that the negligence of the party indemnified hereunder did not cause all of the Claim, Contractor will reimburse the party indemnified hereunder for all costs and expenses incurred by that party in defending against the Claim. Contractor will not be liable hereunder to indemnify any party for damages resulting from the sole negligence of that party.
- B. In addition to the foregoing, Contractor will be liable to defend Owner in any lawsuit filed by any Subcontractor relating to the Project. Where liens have been filed against Owner's property, Contractor (and/or its bonding company which has issued bonds for the Project) will obtain lien releases and record them in the appropriate county and/or local jurisdiction and provide Owner with a title free and clear from any liens of Subcontractors. In the event that Contractor and/or its bonding company are unable to obtain a lien release, Owner in its absolute discretion may require Contractor to provide a bond around the lien or a bond to discharge the lien, at Contractor's sole expense.
- C. In addition to the foregoing, Contractor will indemnify and hold Owner harmless from any claim of any other contractor resulting from the performance, nonperformance or delay in performance of the Work by Contractor.
- D. The indemnification obligation herein will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

### **3.15 PROJECT MEETINGS**

Contractor will attend and participate in meetings as required by the Contract Documents.

## **SECTION 4 - ADMINISTRATION OF THE CONTRACT**

### **4.1 ARCHITECT**

In the event that Owner terminates its contractual relationship with Architect, Owner will appoint in writing another architect, whose status under the Contract Documents will be that of the former Architect in all respects.

### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

- A. Architect will make periodic visits to the site to familiarize itself generally with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. Although Architect is required to make periodic inspections, it is not required to make exhaustive or continuous onsite inspections. On the basis of its observations while at the site, Architect will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defects and deficiencies in the Work. Architect's failure to observe a defect or deficiency in the Work will not relieve Contractor of its duty to perform the Work in accordance with the Contract Documents.
- B. Architect will review Contractor's payment requests and determine the amounts due Contractor in accordance with Section 9.
- C. Communications between Contractor and Owner relating to the Work will be through Architect. Communications between Owner or Contractor with Architect's consultants relating to the Work will be through Architect. Communications between Owner or Architect and subcontractors relating to the Work will be through Contractor. Communications between Contractor and any separate contractor will be through Architect, except as otherwise specified in the Contract Documents.
- D. Owner and/or Architect will have the right to reject and require removal of the following at Contractor's expense:
  - 1. Any portion of the Work that does not meet the requirements of the Contract Documents.
  - 2. Any portion of the Work damaged or rendered unsuitable during installation or resulting from failure to exercise proper protection.
- E. Architect will have authority to suspend the Work, with concurrence of Owner, whenever such suspension may be necessary in its reasonable opinion to insure the proper performance of the Work.
- F. Architect will review Contractor's Submittals and will accept or take other appropriate action regarding the Submittals. Architect's review of the Submittals will be for the limited purpose of checking for general conformance with the Contract Documents and will not be conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor. Architect's review of Submittals will not relieve Contractor of its obligations under the Contract Documents. Architect's review of Submittals will not constitute acceptance of safety precautions or construction

means, methods, techniques, sequences or procedures. Architect's acceptance of a specific item will not indicate acceptance of an assembly of which the item is a component.

- G. Architect has authority to order Construction Change Directives and Field Changes in accordance with Section 7.
- H. Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and review written guarantees and related documents required by the Contract and assembled by Contractor, and will review and certify or reject Contractor's final payment request.
- I. Architect will be the interpreter of the performance and requirements of the Contract Documents. Architect's interpretations will be in writing or in the form of drawings.
- J. Architect's decisions in matters relating to aesthetic effect will be final if consistent with the Contract Documents and approved by Owner.

## **SECTION 5 - SUBCONTRACTORS**

### **5.1 AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK**

- A. Contractor will enter into contracts with Subcontractors to perform all portions of the Work that Contractor does not customarily perform with its own employees.
- B. Contractor will not contract with any Subcontractor who has been rejected by Owner. Contractor will not be required to contract with any Subcontractor against whom it has a reasonable objection.
- C. If Owner rejects any Subcontractor proposed by Contractor, Contractor will propose an acceptable substitute to whom Owner has no reasonable objection.
- D. Contractor will not make any substitution for any Subcontractor that has been accepted by Owner and Architect without the prior written approval of Owner and Architect.

### **5.2 SUBCONTRACTUAL RELATIONS**

- A. Contractor's responsibility for the Work includes the labor and materials of all Subcontractors, including those recommended or approved by Owner. Contractor will be responsible to Owner for proper completion and guarantee of all workmanship and materials under any subcontracts. Any warranties required for such work will be obtained by Contractor in favor of Owner and delivered to Architect. It is expressly understood and agreed that there is no contractual relationship between Owner and any Subcontractor, and under no circumstances will Owner be responsible for the non-performance or financial failure of any Subcontractor or any effects therefrom.
- B. Contractor agrees to pay the Subcontractors promptly upon receipt of payment from Owner for that portion of the funds received which represents the Subcontractor's portion of the Work completed to Contractor's satisfaction for which Owner has made payment.
- C. Contractor will require each Subcontractor to:
  - 1. Be licensed by the state in which the Project is located where such licensing is required by the governing authority;
  - 2. Be bound by the terms of the Contract Documents as far as they are applicable to the Subcontractor's work;
  - 3. Assume toward Contractor the same obligations Contractor has assumed toward Owner, including the prompt payment of its Subcontractors;
  - 4. Submit its applications for payment to Contractor in time to permit Contractor to make timely application to Owner;
  - 5. Execute claim or lien releases or lien waivers for payments made by Contractor; and
  - 6. Make all claims for Changes in the Work to Contractor in the same manner as Contractor is required to make such claims to Owner.

## **SECTION 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM WORK OR AWARD SEPARATE CONTRACTS**

- A. Owner reserves the right to perform work itself or to award separate contracts in connection with the Project.
- B. When separate contracts are awarded, "Contractor" in the Contract Documents in each case will mean the contractor who signs each separate contract.

### **6.2 MUTUAL RESPONSIBILITY**

- A. Contractor will afford other contractors reasonable opportunity to place and store their materials and equipment on site and to perform their work and will properly connect and coordinate its Work with theirs where applicable.
- B. If any part of Contractor's Work depends upon the work of any separate contractor for proper performance or results, Contractor will inspect and promptly report to Architect any apparent discrepancies or defects in such work that render it unsuitable for

proper performance and results. Failure of Contractor to so inspect and report will constitute an acceptance of the work of the separate contractor as fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

- C. Contractor will promptly remedy damage caused by Contractor or any Subcontractor to the completed or partially completed work of other contractors or to the property of Owner or other contractors.

### **6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among Contractor and separate contractors as to the responsibility under their separate contracts for maintaining the Project free from waste materials and rubbish, Owner may clean the Project, allocate the cost among those responsible as Owner and Architect determine to be just, and withhold such cost from any amounts due or to become due to Contractor.

## **SECTION 7 - CHANGES IN THE WORK**

### **7.1 CHANGES IN THE WORK RESULTING FROM AN INSTRUCTION BY OWNER OR ARCHITECT TO CONTRACTOR**

- A. If Owner or Architect gives Contractor an instruction that modifies the requirements of the Contract Documents or delays Substantial Completion, Contractor may be entitled to an adjustment in the Contract Sum and/or the Contract Time. If compliance with the instruction affects the cost to Contractor to perform the Work, the Contract Sum will be adjusted to reflect the reasonable increase or decrease in cost subject to the conditions set forth in Section 7.1, Paragraphs B through G. If compliance with the instruction delays Substantial Completion, the Contract Time will be extended for a period of time commensurate with such delay subject to the conditions set forth in Section 7.1, Paragraphs B through G and Section 7.3, Paragraph A and Contractor will be paid liquidated damages for the delay as set forth in Section 7.3, Paragraph B.
- B. If Contractor receives an instruction from Owner or Architect that Contractor considers to be a Change in the Work, Contractor, before complying with the instruction, will notify Architect in writing that Contractor considers such instruction to constitute a Change in the Work. If Architect agrees that compliance with the instruction will constitute a Change in the Work, Contractor will furnish a proposal for a Modification in accordance with Section 7.1, Paragraphs C. and D. within ten (10) days.
- C. If Contractor claims that it is entitled to an adjustment in the Contract Sum (including without limitation costs related to a time extension) as a result of an instruction by Owner or Architect, Contractor will furnish a proposal for a Change Order containing a price breakdown itemized as required by Owner. The breakdown will be in sufficient detail to allow Owner to determine any increase or decrease in Direct Costs as a result of compliance with the instruction. Any amount claimed for subcontracts will be supported by a similar price breakdown and will itemize the Subcontractor's profit and overhead charges. Profit and overhead will be subject to the following limitations:
  - 1. The Subcontractor's profit and overhead will not exceed ten (10) percent of its Direct Costs on work performed. Subcontractor's profit and overhead will not exceed five (5) percent on work performed by its sub-subcontractors.
  - 2. Contractor's profit and overhead on work performed by its own crews will not exceed ten (10) percent of its Direct Costs.
  - 3. Contractor's profit and overhead mark up on work performed by its Subcontractors will not exceed five (5) percent of the Subcontractors' charges for such work.
  - 4. Amounts due Owner as a result of a credit change will be the actual net savings to Contractor from the Change in the Work as confirmed by Architect. On credit changes, profit and overhead on the originally estimated work will not be credited back to Owner. If both additions and credits are involved in a single Change in the Work, overhead and profit will be figured on the basis of net increase, if any, related to that Change in the Work.
- D. If Contractor claims that it is entitled to an adjustment in the Contract Time as a result of an instruction from Owner or Architect, Contractor will include in its proposal justification to support Contractor's claim that compliance with the instruction will delay Substantial Completion.
- E. Upon receipt of Contractor's proposal for Modification, Architect and Owner will determine whether to proceed with the Change in the Work. If Architect and Owner determine to proceed with the Change in the Work, they will issue a Change Order, a Construction Change Directive or a Field Change as appropriate.
- F. Contractor agrees that if it complies with an instruction from Owner or Architect without first giving written notice to Architect as provided in Section 7.1., Paragraph B, and receiving a Change Order, Construction Change Directive or Field Change, Contractor will not be entitled to any adjustment in the Contract Sum or the Contract Time as a result of the instruction and waives any claim therefor.
- G. If Contractor is instructed to perform work which it claims constitutes a Change in the Work but which Owner and Architect do not agree constitutes a Change in the Work, Contractor will comply with the instruction. Contractor may submit its claim for adjustment to the Contract Sum, the Contract Time, or both as a dispute pursuant to Section 13 within thirty (30) days after compliance with the instruction. Contractor agrees that if it fails to submit its claim for resolution pursuant to Section 13 within thirty (30) days after compliance with the instruction, then Contractor will not be entitled to any adjustment in the Contract Sum or the Contract Time as a result of the instruction and waives any claim therefor.
- H. Contractor agrees that it is responsible for submitting accurate cost and pricing data to support its Change Order Proposals. Owner will have the right to examine the Contractor's records to verify the accuracy and appropriateness of the pricing data used to price change order proposals.

### **7.2 CHANGE IN THE WORK RESULTING FROM AN EVENT OR CIRCUMSTANCE**

- A. If an event or circumstance other than an instruction from Owner or Architect affects the cost to Contractor of performing the Work or delays Substantial Completion, Contractor may be entitled to an adjustment in the Contract Sum and/or the Contract Time. If the circumstance or event affects the cost to Contractor to perform the Work and is caused by a willful or negligent act or omission of Owner or Architect, the Contract Sum will be adjusted to reflect the reasonable increase or decrease in Contractor's cost to perform the Work resulting from the event or circumstance, subject to the conditions set forth in Section 7.2, Paragraphs B through F. If the event or circumstance delays Substantial Completion and is described in Section 7.3, Paragraph A, the Contract Time will be extended for a period of time commensurate with such delay subject to the conditions set forth in such section. If the circumstance or event delays Substantial Completion and is caused by a willful or negligent act or omission of Owner or Architect, then Contractor will be compensated for costs incident to the delay in accordance with Section 7.3, Paragraph B. Contractor will not be entitled to any adjustment to the Contract Sum or other damages from Owner as a result of any event or circumstance unless the event or circumstance results from a willful or negligent act or omission of Owner or Architect.
- B. If a Change in the Work results from any event or circumstance caused by the willful or negligent act or omission of Owner or Architect, Contractor will give Owner Written Notice of such event or circumstance within twenty-four (24) hours after commencement of the event or circumstance so that Owner can take such action as is necessary to mitigate the effect of the event or circumstance. Contractor will not be entitled to any adjustment in either the Contract Time or the Contract Sum based on any damages or delays resulting from such event or circumstance during a period more than twenty-four (24) hours prior to Contractor giving such Written Notice to Owner.
- C. Contractor will submit in writing any claims for an adjustment in the Contract Time and/or the Contract Sum resulting from an event or circumstance within the time limits set forth below. In the event that Contractor fails to submit its claim in writing within the time limits set forth below, then Contractor agrees it will not be entitled to any adjustment in the Contract Time or the Contract Sum or to any other damages from Owner due to the circumstance or event and waives any claim therefor.
  - 1. Claims for an adjustment in the Contract Time due to Adverse Weather will be made by the tenth (10th) of the month following the month in which the delay occurred.
  - 2. Claims for an adjustment in the Contract Time and/or the Contract Sum due to any other circumstance or event will be submitted within seven (7) days after the occurrence of the circumstance or event.
- D. If Contractor claims that it is entitled to an adjustment in the Contract Sum (including without limitation costs related to a time extension) because of an event or circumstance resulting from the willful or negligent act or omission of Owner or Architect, Contractor will furnish a proposal for a Change Order containing a price breakdown as described in Section 7.1, Paragraph C. Any amount claimed for increased labor costs as a result of the event or circumstance must be supported by a certified payroll. Any claim for rented equipment or additional material costs must be supported by invoices.
- E. If Contractor claims that it is entitled to an adjustment in the Contract Time as a result of an event or circumstance, Contractor will include with its claim copies of daily logs, letters, shipping orders, delivery tickets, Project schedules, and other supporting information necessary to justify Contractor's claim that the event or circumstance delayed Substantial Completion. If Contractor is entitled to an adjustment in the Contract Time as a result of an event or circumstance caused by the willful or negligent act or omission of Owner or Architect, Contractor will be compensated for all costs related to the delay in accordance with Section 7.3, Paragraph B.
- F. Within thirty (30) days after receipt of Contractor's claim, Architect will either deny the claim or recommend approval to Owner. If Owner approves the claim, the adjustment in the Contract Time and/or Contract Sum will be reflected in a Change Order pursuant to Section 7.5 or a Construction Change Directive pursuant to Section 7.6. If Owner or Architect denies Contractor's claim, Contractor may submit its claim as a dispute pursuant to Section 13 within thirty (30) days of receipt of the denial of the claim. If Contractor fails to submit its claim for resolution pursuant to Section 13 within the thirty (30) day time period, then Contractor agrees it is not entitled to any adjustment in the Contract Time and/or Contract Sum or any other damages as a result of the event or circumstance and waives any claim therefor.

### 7.3 EXTENSIONS OF TIME

- A. If Substantial Completion of the Project is delayed because of any of the following causes, then the Contract Time will be extended by Change Order for a period of time equal to such delay:
  - 1. Labor strikes or lock-outs;
  - 2. Adverse weather;
  - 3. Unusual delay in transportation;
  - 4. Unforeseen governmental requests or requirements;
  - 5. A Change in the Work resulting from an instruction by Owner or Architect to Contractor subject to the conditions set forth in Section 7.1; or
  - 6. Any other event or circumstance caused by the willful or negligent act or omission of Owner or Architect.
- B. Contractor will not be entitled to any compensation for delay described in Section 7.3, Paragraph A, subparagraphs 1, 2, 3 and 4. For each day of delay in Substantial Completion described in Section 7.3, Paragraph A, subparagraphs 5 and 6, Contractor will be paid liquidated damages in the amount per day set forth in the Supplementary Conditions to compensate Contractor for all damages resulting from any delay including but not limited to damages for general conditions costs, additional job site costs, additional home office overhead costs, disruption costs, acceleration costs, increase in labor costs, increase in subcontract costs, increase in materials costs, and any other costs incident to the delay. Contractor will be entitled to no other compensation relating to the delay.

- C. In no event will any time extension or cost adjustment be given on account of delay which reasonably should have been anticipated by the Contractor or in circumstances where performance of the Work is, was, or would have been, delayed by any other cause for which the Contractor is not entitled to an extension.

#### **7.4 DOCUMENTATION OF CHANGES IN THE WORK**

Every Change in the Work will be documented by a Change Order, a Construction Change Directive or a Field Change. If Owner, Architect and Contractor reach agreement regarding the adjustment in the Contract Sum, if any, and the adjustment in the Contract Time, if any, resulting from a Change in the Work, then the parties will execute a Change Order pursuant to Section 7.5. If Owner, Architect and Contractor cannot reach agreement regarding the adjustment in Contract Sum or the adjustment in Contract Time resulting from a Change in the Work, then Owner and Architect will issue a Construction Change Directive pursuant to Section 7.6. Field Changes require the agreement of Architect and Contractor only.

#### **7.5 CHANGE ORDERS**

Contractor's signature upon a Change Order is Contractor's acknowledgment that it is not entitled to any additional adjustment in the Contract Sum or the Contract Time or any other damages or compensation as a result of the Change in the Work other than that provided for in the Change Order, irrespective of whether a subsequent claim for additional compensation or time extensions relating to the Change in the Work is described as a change in the requirements of the Contract Documents, a delay, a disruption of the Work, an acceleration of the Work, an impact on the efficiency of performance of the Work, an equitable adjustment, or other claim and irrespective of whether the impact of the Change in the Work is considered singly or in conjunction with the impact of other Changes in the Work.

#### **7.6 CONSTRUCTION CHANGE DIRECTIVES**

- A. Contractor will promptly comply with all Construction Change Directives.
- B. Pending final resolution of any adjustment in the Contract Sum or Contract Time relating to a Construction Change Directive, the amounts proposed by Owner in the Construction Change Directive may be included in Contractor's payment requests once the work relating thereto is completed.
- C. If after the work described in the Construction Change Directive is completed, Owner, Architect, and Contractor reach agreement on adjustments in the Contract Sum, Contract Time, or both, such agreement will be reflected in an appropriate Change Order.
- D. If the parties do not reach agreement regarding an adjustment to the Contract Sum, Contract Time, or both relating to the Construction Change Directive within thirty (30) days of the completion of the work described therein, then Contractor may submit its claim for an adjustment pursuant to Section 13 within thirty (30) days of the completion of such work. Contractor agrees that if it fails to submit its claim for resolution pursuant to Section 13 within thirty (30) days of completion of the work described in the Construction Change Directive, then it will not be entitled to an adjustment in Contract Sum or Contract Time resulting from such work except as set forth in the Construction Change Directive and waives any claim therefor.

#### **7.7 FIELD CHANGES**

Architect and Contractor will sign a Field Change order listing the Change In The Work and the Contract Sum including markups before Contractor proceeds with the Field Change.

#### **7.8 WAIVER OF CLAIMS**

Except as set forth in Section 7, Contractor will not be entitled to any adjustment in the Contract Sum or the Contract Time or for any damages of any kind whatsoever resulting from an instruction from Owner or Architect, any event or circumstance, or any act or omission of Owner or Architect and Contractor expressly waives any and all claims therefor.

### **SECTION 8 - TIME**

#### **8.1 TIME IS OF THE ESSENCE**

All time limits stated in the Contract Documents are of the essence. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor will proceed expeditiously with adequate resources and will achieve Substantial Completion within the Contract Time.

#### **8.2 COMMENCEMENT OF THE WORK**

Contractor will not commence work on the Project site until the date set forth in the Written Notice to proceed. However, Contractor may enter into subcontracts and secure material for the Project after receipt of the Agreement with Owner's authorized signature. Owner will issue the Written Notice to proceed within forty-five (45) days after Owner receives acceptable bonds and evidence of insurance pursuant to Section 11 unless Owner earlier terminates the Agreement pursuant to Section 14.

#### **8.3 DELAY IN COMPLETION OF THE WORK**

- A. For each day after the expiration of the Contract Time that Contractor has not achieved Substantial Completion, Contractor will pay Owner the amount set forth in the Supplementary Conditions as liquidated damages for Owner's loss of use of the Project

and the added administrative expense to Owner to administer the Project during the period of delay. In addition, Contractor will reimburse Owner for any additional Architect's fees, attorney fees, expert fees, consultant fees, copy costs, and other expenses incurred by Owner as a result of the delay. Owner may deduct any liquidated damages or reimbursable expenses from any money due or to become due to Contractor. If the amount of liquidated damages and reimbursable expenses exceeds any amounts due to Contractor, Contractor will pay the difference to Owner within ten (10) days after receipt of a written request from Owner for payment.

- B. At the time Architect certifies that Contractor has achieved Substantial Completion, Architect will identify the remaining items to be completed for final completion of the Work and will establish with Contractor a reasonable time for completion of those items. Architect will set forth the items to be completed and the time established for their completion in a Certificate of Substantial Completion. For each day that Contractor exceeds the time allowed for completion of the items set forth in the Certificate of Substantial Completion, Contractor will pay to Owner as liquidated damages for additional administrative expenses the amount set forth in the Supplementary Conditions. In addition, Contractor will reimburse Owner for any additional Architect's fees, attorney fees, expert fees, consultant fees, copy costs, and other expenses incurred by Owner as a result of the delay in completing such items.

## **SECTION 9 - PAYMENTS AND COMPLETION**

### **9.1 SCHEDULE OF VALUES**

Contractor will submit to Architect a schedule of values which allocates the Contract Sum to various portions of the Work. The schedule of values will be supported by such data to substantiate its accuracy as required by Architect. This schedule, when accepted by Owner and Architect, will be used as a basis for reviewing Contractor's payment requests.

### **9.2 PAYMENT REQUESTS**

- A. Not more than once a month, Contractor will submit a payment request to Architect for Work completed, materials stored on the site, and for materials stored offsite as of the date of the payment request. The amount of the payment request will be based upon the schedule of values and will be equal to the value of the Work completed:
  - 1. Less retention;
  - 2. Less all prior amounts paid by Owner to Contractor as part of the Contract Sum; and
  - 3. Less allowable offsets.The payment request may include Changes in the Work that have been performed by Contractor and authorized by Owner and/or Architect pursuant to Section 7. If a payment request includes materials stored offsite, Contractor will include with the payment request a list of the materials, the location where they are stored and the written request of Contractor and its performance bond surety that payment be made for such materials.
- B. Contractor warrants and guarantees that upon the receipt of payment for materials and equipment, whether incorporated in the Project or not, title to such materials and equipment will pass to Owner free and clear of all liens, claims, security interests, or encumbrances. Notwithstanding this payment and passage of title, Contractor will remain responsible for all such materials and equipment until actual delivery to the project site, incorporation into the Work, and final acceptance by Owner. Contractor further warrants that no material or equipment covered by a payment request is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or any other person or entity.

### **9.3 PAYMENT REQUEST CERTIFICATION**

- A. Architect will, within seven (7) days after receipt of Contractor's payment request, forward to Owner the payment request certified for such amount as Architect determines is properly due. If Architect certifies less than the full amount of the payment request, Architect will notify Contractor and Owner of Architect's reasons for withholding certification of the full amount requested.
- B. The certification of the payment request will constitute a representation by Architect to Owner based upon Architect's observations at the site and the data comprising the payment request, that the Work has progressed to the point indicated and that, to the best of Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by Architect. However, the certification of the payment request will not constitute a representation that Architect has:
  - 1. Conducted exhaustive or continuous on-site inspections to check the quantity or quality of the Work;
  - 2. Reviewed construction means, methods, techniques, sequences, or procedures;
  - 3. Reviewed copies of requisitions received from Subcontractors or other data requested by Owner to substantiate Contractor's right to payment; or
  - 4. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.
- C. In taking action on Contractor's payment request, Owner will be entitled to rely on the accuracy and completeness of the information furnished by Contractor.

### **9.4 DECISIONS TO WITHHOLD CERTIFICATION AND PAYMENT**

- A. Architect may withhold certification of a payment request in whole or in part to the extent reasonably necessary to protect Owner if, in the opinion of Architect, the representations to Owner required by Section 9.3, Paragraph B cannot be accurately made. If



Architect is unable to certify payment in the amount of the payment request, Architect will notify Contractor and Owner as provided in Section 9.3, Paragraph A. If Contractor and Architect cannot agree on a revised amount, Architect will promptly certify a payment request for the amount for which Architect is able to make such representations to Owner. Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a payment request previously certified, to such extent as may be necessary in Architect's opinion to protect Owner from loss because of:

1. Defective work not remedied;
  2. Third-party claims filed or reasonable evidence indicating probable filing of such claims;
  3. Failure of Contractor to make payments properly to Subcontractors for labor, materials, equipment, construction or services;
  4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  5. Damage to Owner or another contractor for which Contractor is responsible;
  6. Reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance will not be adequate to cover the cost of completing the Work and damages for the anticipated delay; or
  7. Contractor's persistent failure to carry out the Work in accordance with the Contract Documents.
- B. Owner reserves the right to withhold payments to Contractor, subsequent to Architect's certification of any payment request, in order to protect Owner from loss due to any condition described in Section 9.4, Paragraph A, Subparagraphs 1 through 7. Upon satisfactory resolution of any such conditions, payments so withheld will be made.

## **9.5 PROGRESS PAYMENTS**

- A. Owner will pay Contractor progress payments within the parameters of Section 9.2 within fifteen (15) days after Owner receives the certified payment request from Architect.
- B. Owner will make payments to Contractor by either placing the payments in the mail addressed to Contractor or by electronic transfer at Owner's discretion.
- C. Upon receipt of any payment from Owner, Contractor will pay to each Subcontractor the amount paid to Contractor on account of such Subcontractor's portion of the Work.
- D. Contractor will maintain a copy of each payment request at the Project site for review by the Subcontractors.
- E. No payment made under the Contract Documents, either in whole or in part, will be construed to be an acceptance of defective or improper materials or workmanship.
- F. In addition and notwithstanding the foregoing, Owner will also withhold and retain 10% of payments made to Contractor.
- G. Owner will pay any unpaid retention less any amounts withheld pursuant to Section 9.4 within forty-five (45) days after Contractor achieves Substantial Completion, submits its payment request for retained funds, delivers to the Architect Owner's form entitled "Contractor's Substantial Completion Affidavit and Consent of Surety" fully executed by Contractor and its surety, obtains Waiver and Release documents executed by all subcontractors and suppliers having claim against the retained funds, and Owner receives a certificate of occupancy.

## **9.6 FINAL PAYMENT**

- A. Owner will make full and final payment of the Contract Sum within thirty (30) days of the completion of all of the following requirements:
1. Contractor has submitted its final payment request;
  2. Architect has declared to Owner in writing that the Work is complete;
  3. Contractor has obtained waiver and release upon final payment documents executed by all of the subcontractors performing work and/or providing materials covered by the Contractor's final payment request; and
  4. Contractor has collected and provided to Owner all manufacturers' and other guaranties and warranties, properly signed and endorsed to Owner, that are required by the Contract Documents that extend for a period beyond one year after substantial completion. (Delivery of such guaranties and warranties will not relieve Contractor for any obligation assumed under any other provision of the Contract Documents.).
- B. Acceptance of final payment by Contractor or any Subcontractor will constitute a waiver of claims by the payee except for those claims previously made in writing pursuant to Section 7 and identified by Contractor in its affidavit as still pending.
- C. If the aggregate of previous payments made by Owner exceeds the amount due Contractor, Contractor will reimburse the difference to Owner.

# **SECTION 10 - PROTECTION OF PERSONS AND PROPERTY**

## **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

Contractor will be responsible to Owner for initiating and supervising all safety programs in connection with the performance of the Work.

## **10.2 SAFETY OF PERSONS AND PROPERTY**

- A. Contractor will take reasonable precautions to prevent damage, injury, or loss to:

1. All persons on the site;
  2. The Work and materials and equipment to be incorporated into the Work; and
  3. Other property at the site or adjacent to it.
- B. Contractor will give notices and comply with applicable laws, ordinances, rules, regulations, and other lawful requirements of public authorities bearing on the safety or protection of persons and property. No work will be performed that may pose an undue safety hazard to Contractor, Contractor's employees, or any other person.
- C. Contractor will designate a responsible member of its organization at the site whose duty will be the prevention of accidents. This person will be Contractor's onsite representative unless otherwise designated in writing by Contractor to Owner and Architect.

### 10.3 EMERGENCIES

In case of an emergency endangering life or threatening the safety of any person or property, Contractor may, without waiting for specific authorization from Architect or Owner, act at its own discretion to safeguard persons or property. Contractor will immediately notify Architect of such emergency action and make a full written report to Architect within five (5) days after the event.

### 10.4 HAZARDOUS MATERIALS

In the event the Contractor encounters on the site material reasonably believed to be hazardous materials which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall be resumed in the absence of hazardous materials, or when it has been rendered harmless, by written agreement of the Owner and Contractor.

## SECTION 11 - INSURANCE AND BONDS

### 11.1 CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor will obtain the following insurance and provide evidence thereof as described below prior to commencement of the Work or within ten (10) days after signing the Agreement, whichever is earlier:
1. Workers Compensation Insurance.
  2. Employers Liability Insurance with minimum limits of the greater of \$500,000 E.L. each accident, \$500,000 E. L. disease- each employee, \$500,000 E.L. disease-policy limit or as required by the law of the state in which the Project is located.
  3. Commercial General Liability Insurance – ISO Form CG 00 01 (12/07) or equivalent Occurrence policy which will provide primary coverage to the additional insureds (the Owner and the Architect) in the event of any Occurrence, Claim, or Suit with:
    - a. Limits of the greater of Contractor's actual coverage amounts or the following:
      - 1) \$2,000,000 General Aggregate;
      - 2) \$2,000,000 Products - Comp/Ops Aggregate;
      - 3) \$1,000,000 Personal and Advertising Liability;
      - 4) \$1,000,000 Each Occurrence;
      - 5) \$50,000 Fire Damage to Rented Premises (Each Occurrence).
    - b. Endorsements attached to the General Liability policy including the following or their equivalent:
      - 1) ISO Form CG 25 03 (05/09), Amendment of Limits of Insurance (Designated Project or Premises), describing the Agreement and specifying limits as shown above.
      - 2) ISO Form CG 20 10 (07/04), Additional Insured -- Owners, Lessees, Or Contractors (Form B), naming Owner and Architect as additional insureds.
  4. Automobile Liability Insurance, with:
    - a. Combined Single Limit each accident in the amount of \$1,000,000 or Contractor's actual coverage, whichever is greater; and
    - b. Coverage applying to "Any Auto."
- B. Contractor will provide evidence of such insurance to Owner as follows:
1. Deliver to Owner a Certificate of Liability Insurance, on ACORD 25 (2010/05) Form, or equivalent:
    - a. Listing Owner and its consultants as the Certificate Holders and Additional Insured on the general liability and any excess liability policies;
    - b. Attaching the ISO or equivalent endorsements set forth above to the Certificate of Liability Insurance;
    - c. Identifying the Project;
    - d. Listing the insurance companies providing coverage (All companies listed must be rated in A.M. Best Company Key Rating Guide-Property-Casualty and each company must have a rating of B+ Class VII or better. Companies which are not rated are not acceptable); and
    - e. Bearing the name, address and telephone number of the producer and signed by an authorized representative of the producer. The signature may be original, stamped, or electronic.
- C. Contractor will maintain, from commencement of the Work, Insurance coverage required herein as follows:
1. Commercial General Liability Insurance through expiration of warranty period specified in Section 12.2, Paragraph B. including completion of any warranty repairs; and
  2. All other insurance through Final Payment.
- D. Owner reserves the right to reject any insurance company, policy, endorsement, or certificate of insurance with or without cause.

- E. Owner may, in writing and at its sole discretion, modify the insurance requirements.
- F. The cost of insurance as required above will be the obligation of Contractor. Contractor will be responsible for payment of all deductible amounts under all insurance.
- G. Owner will provide builders risk insurance for the cost of the Project. The policy will be written on an all risk basis with coverage for perils of wind, flood, earthquake, and terrorism, with exclusions standard for the insurance industry. The policy will be subject to a \$5,000 deductible per occurrence which will be the responsibility of Contractor and will not be a reimbursable expense. Owner will provide a copy of the terms and conditions of the builders risk policy to Contractor upon Contractor's request. Contractor will comply with terms, conditions, and deadlines of the builders risk policy. The terms, conditions, and deadlines of the builders risk policy shall govern coverage. In addition, when there is a loss which may be covered by the builders risk insurance policy, Contractor will comply with the following:
  - 1. Contractor will report the loss immediately to builders risk commercial insurer by calling 1-866-537-7475 and shall make such further written submissions as required and otherwise comply with all requirements of the builders risk policy.
  - 2. Contractor will report the loss immediately to the Owner.
  - 3. Contractor will immediately notify its general liability insurance carrier of the loss.
  - 4. Contractor will take all necessary and appropriate actions to protect the property and individuals from further loss, harm, and injury. In the event there are damages resulting from fire or water, restoration shall be performed only by a certified restoration contractor.
  - 5. To the extent possible, Contractor will preserve and not disturb the evidence of the loss until after the builders risk commercial insurer and all interested parties and their insurance carriers have had the opportunity to view and investigate the site and loss.
  - 6. Contractor will cooperate with Owner and the builders risk commercial insurer in the investigation, documentation, and settlement of loss claims, including without limitation promptly responding to all requests for information and documentation from the builders risk commercial insurer and/or Owner.

## **11.2 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- A. Prior to commencement of the Work or within ten (10) days after signing the Agreement, whichever is earlier, Contractor will furnish to Owner a performance bond and a labor and material payment bond each in an amount equal to one hundred percent (100%) of the Contract Sum as security for all obligations arising under the Contract Documents. Such bonds will:
  - 1. Be written on Form AIA Document A312 (1984).
  - 2. Be issued by a surety company or companies licensed in the state in which the Project is located and holding valid certificates of authority under Sections 9304 to 9308, Title 31, of the United States Code as acceptable sureties or reinsurance companies on federal bonds.
  - 3. Have a penal sum obligation not exceeding the authorization shown in the current revision of Circular #570 as issued by the United States Treasury Department, i.e. "Treasury List".
  - 4. Be accompanied by a certified copy of the power of attorney stating the authority of the attorney-in-fact executing the bonds on behalf of the surety.
- B. Owner reserves the right to reject any surety company, performance bond, or labor and material payment bond with or without cause.
- C. The cost of the bonds as required above will be the obligation of Contractor.

## **SECTION 12 - UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

Contractor will notify Architect at least twenty-four (24) hours in advance of performing work that would cover up work or otherwise make it difficult to perform inspections required by the Specifications or by applicable governing authorities. Should any such work be covered without proper notification having been given to Architect, Contractor will uncover that work for inspection at its own expense.

### **12.2 CORRECTION OF WORK**

- A. Contractor will promptly correct any portion of the Work that is rejected by Architect or which fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor will bear the cost of correcting such rejected Work, including additional testing and inspection costs, compensation for Architect's services, and any other expenses made necessary thereby.
- B. Contractor will remedy any defects due to faulty materials, equipment, or workmanship which appear within a period of one (1) year from the date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents. Contractor will pay all costs of correcting faulty work, including without limitation additional Architect's fees, attorney fees, expert fees, consultant fees, copy costs, and other expenses when incurred.
- C. Nothing in the Contract Documents will be construed to establish a period of limitation within which Owner may enforce the obligation of Contractor to comply with the Contract Documents. The one-year period specified above has no relationship to the time within which compliance with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations.

## **12.3 ACCEPTANCE OF NONCONFORMING WORK**

- A. If Owner prefers to accept any portion of the Work not in conformance with the Contract Documents, Owner may do so instead of requiring removal and correction of the nonconforming Work. In that event, the Contract Sum will be reduced by an amount agreed upon by the parties that reflects the difference in value to Owner between the Work as specified and the nonconforming Work. Such adjustment may consider increased maintenance costs, early replacement costs, increased inefficiency of use, and the like and will be effective whether or not final payment has been made. Such adjustment will be reflected in a Change Order pursuant to Section 7.5.
- B. Temporary or trial usage by Owner or Architect of mechanical devices, machinery, apparatus, equipment, or other work or materials supplied under the Contract Documents prior to written acceptance by Architect, will not constitute Owner's acceptance.

## **SECTION 13 - RESOLUTION OF DISPUTES**

### **13.1 SUBMITTAL OF DISPUTE**

In the event there is any dispute arising under this Agreement which cannot be resolved by agreement between the parties, either party may submit the dispute with all documentation upon which it relies to the Director of Architecture, Engineering, and Construction, Meetinghouse Facilities Department, 50 East North Temple, Salt Lake City, Utah 84150, who will convene a dispute resolution conference within thirty (30) days. The dispute resolution conference will constitute settlement negotiations and any settlement proposal made pursuant to the conference will not be admissible as evidence of liability. In the event that the parties do not resolve their dispute pursuant to the dispute resolution conference, either party may commence legal action to resolve the dispute. Any such action must be commenced within six (6) months from the first day of the dispute resolution conference or be time barred. Submission of the dispute to the Director as outlined above is a condition precedent to the right to commence legal action to resolve any dispute. In the event that either party commences legal action to adjudicate any dispute without first submitting the dispute to the Director, the other party will be entitled to obtain an order dismissing the litigation without prejudice and awarding such other party any costs and attorney fees incurred by that party in obtaining the dismissal, including without limitation copy costs, and expert and consultant fees and expenses.

### **13.2 CONTRACTOR TO PROCEED WITH DILIGENCE**

Pending final resolution of a dispute hereunder, Contractor will proceed diligently with the performance of its obligations under this Agreement.

## **SECTION 14 - TERMINATION**

### **14.1 TERMINATION BY CONTRACTOR**

In the event Owner materially breaches any term of the Contract Documents, Contractor will promptly give Written Notice of the breach to Owner. If Owner fails to cure the breach within ten (10) days of the Written Notice, Contractor may terminate the Agreement by giving Written Notice to Owner and recover from Owner the percentage of the Contract Sum represented by the Work completed on the Project site as of the date of termination together with any out of pocket loss Contractor has sustained with respect to materials and equipment as a result of the termination prior to completion of the Work, less any offsets. Contractor will not be entitled to unearned profits or any other compensation or damages as a result of the termination and hereby waives any claim therefor. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Without limitation, Contractor's indemnities and obligations under section 3.14 as well as all warranties in the specifications relative to Work provided through the date of termination survive a termination hereunder.

### **14.2 TERMINATION BY OWNER FOR CAUSE**

Should Contractor fail to provide Owner with the bonds and certificates of insurance required by Section 11 within the time specified therein, make a general assignment for the benefit of its creditors, fail to apply enough properly skilled workmen or specified materials to properly prosecute the Work in accordance with Contractor's schedule, or otherwise materially breach any provision of the Contract Documents, then Owner may, without any prejudice to any other right or remedy, give Contractor Written Notice thereof. If Contractor fails to cure its default within ten (10) days, Owner may terminate the Agreement by giving Written Notice to Contractor. In such case, Owner may, in Owner's sole discretion, take legal assignment of subcontracts and other contractual rights of Contractor and/or take possession of the premises and all materials, tools, equipment, and appliances thereon, and finish the Work by whatever method Owner deems expedient. Contractor will not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, including compensation for additional administrative, architectural, consultant, and legal services (including without limitation attorney fees, expert fees, copy costs, and other expenses), such excess will be paid to Contractor. If such expense exceeds the unpaid balance, Contractor will pay the difference to Owner. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Without limitation, Contractor's indemnities and obligations under section 3.14 as well as all warranties in the specifications relative to Work provided through the date of termination survive a termination hereunder.

### **14.3 TERMINATION BY OWNER FOR CONVENIENCE**

Notwithstanding any other provision contained in the Contract Documents, Owner may, without cause and in its absolute discretion, terminate the Agreement at any time. In the event of such termination, Contractor will be entitled to recover from Owner the

percentage of the Contract Sum equal to the percentage of the Work which Architect determines has been completed on the Project site as of the date of termination together with any out of pocket loss Contractor has sustained with respect to materials and equipment as a result of the termination prior to completion of the Work, less any offsets. Contractor will not be entitled to unearned profits or any other compensation as a result of the termination and hereby waives any claim therefor. Contractor will provide to Owner all warranty, as built, inspection, and other close out documents as well as materials that Contractor has in its possession or control at the time of termination. Owner may, in Owner's sole discretion, take legal assignment of subcontracts and other contractual rights of Contractor. Without limitation, Contractor's indemnities and obligations under section 3.14 as well as all warranties in the specifications relative to Work provided through the date of termination survive a termination hereunder.

## **SECTION 15 - MISCELLANEOUS PROVISIONS**

### **15.1 GOVERNING LAW**

The parties acknowledge that the Contract Documents have substantial connections to the State of Utah. The Contract Documents will be deemed to have been made, executed, and delivered in Salt Lake City, Utah. To the maximum extent permitted by law, (i) the Contract Documents and all matters related to their creation and performance will be governed by and enforced in accordance with the laws of the State of Utah, excluding conflicts of law rules; and (ii) all disputes arising from or related to the Contract Documents will be decided only in a state or federal court located in Salt Lake City, Utah and not in any other court or state. Toward that end, the parties hereby consent to the jurisdiction of the state and federal courts located in Salt Lake City, Utah and waive any other venue to which they might be entitled by virtue of domicile, habitual residence, place of business, or otherwise.

### **15.2 NO WAIVER**

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

### **15.3 RULE OF CONSTRUCTION**

Owner and Contractor agree that the Contract Documents will be deemed to have been drafted by both Owner and Contractor and will not be construed against either Owner or Contractor because of authorship.

### **15.4 ENFORCEMENT**

In the event either party commences legal action to enforce or rescind any provision of the Contract Documents, the prevailing party will be entitled to recover its attorney fees and costs, including without limitation all copy costs and expert and consultant fees and expenses, incurred in that action and on all appeals, from the other party.

### **15.5 TESTS AND INSPECTIONS**

- A. Owner and Architect have the right to have tests made when they deem it necessary. Tests conducted by Owner or Architect will be paid for by Owner. Should a test reveal a failure of the Work to meet Contract Document requirements, the cost of the test as well as subsequent tests related to the failure necessary to determine compliance with the Contract Documents will be paid for by Owner, with the cost thereof deducted from the Contract Sum by Modification.
- B. Tests will be made in accordance with recognized standards by a competent, independent testing laboratory. Materials found defective or not in conformity with Contract Document requirements will be promptly replaced or repaired at the expense of Contractor.
- C. Owner and Architect have the right to obtain samples of materials to be used in the Work and to test samples for determining whether they meet Contract Document requirements. Samples required for testing will be furnished by Contractor and selected as directed by Architect. Samples may be required from the sample's source, point of manufacture, point of delivery, or point of installation at Architect's discretion. Samples not required as a Submittal in the Specifications will be paid for by Owner. Should tests reveal a failure of the Sample to meet the Contract Document requirements, Contractor will provide other Samples that comply with the requirements of the Contract Documents.

END OF DOCUMENT

**SUPPLEMENTARY CONDITIONS  
FIXED SUM (U.S.)**

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**ITEM 1 - GENERAL**

1. Conditions of the Agreement and General Conditions apply to each Division of the Specifications.
2. Provisions contained in Division 01 apply to all Divisions of the Specifications.

**ITEM 2 - LIQUIDATED DAMAGE AMOUNTS:**

1. The amount of liquidated damages to the benefit of the Contractor for delays under General Conditions Section 7.3, Paragraph B is \$0 per day.
2. The amount of liquidated damages to the benefit of the Owner for delays in Substantial Completion of the Work under General Conditions Section 8.3, Paragraph A is \$500 per day.
3. The amount of liquidated damages to the benefit of the Owner for delays in completing work itemized on the Substantial Completion Certificate under General Conditions Section 8.3, Paragraph B is \$150 per day.

**ITEM 3 - PERMITS**

1. Delete Section 3.6, Paragraph B of the General Conditions and replace with the following:
  - B. Contractor will obtain and pay for the building permit and all other permits governmental fees, licenses and inspections necessary for the proper execution and completion of the Work as a reimbursable expense.

**ITEM 4 - MISCELLANEOUS CHANGES IN GENERAL CONDITIONS**

1. FOR PROJECTS EXCEEDING \$5 MILLION – CONTRACTOR TO PROVIDE BUILDER’S RISK INSURANCE (AND NOT OWNER)

*Replace Section 11.1 Contractor’s Liability Insurance of the General Conditions with the following:*

**11.1 CONTRACTOR'S LIABILITY INSURANCE**

- A. Contractor will obtain the following insurance and provide evidence thereof as described below prior to commencement of the Work or within ten (10) days after signing the Agreement, whichever is earlier:
  1. Workers Compensation Insurance.
  2. Employers Liability Insurance with minimum limits of the greater of: \$500,000 E.L. each accident, \$500,000 E. L. disease-each employee, \$500,000 E.L. disease-policy limit; or as required by the law of the state in which the Project is located.
  3. Commercial General Liability Insurance – ISO Form CG 00 01 (12/07) or equivalent Occurrence policy which will provide primary coverage to the additional insureds (the

Owner and the Architect) in the event of any Occurrence, Claim, or Suit with:

a. Limits of the greater of: Contractor's actual coverage amounts or the following:

- 1) \$2,000,000 General Aggregate;
- 2) \$2,000,000 Products - Comp/Ops Aggregate;
- 3) \$1,000,000 Personal and Advertising Injury;
- 4) \$1,000,000 Each Occurrence;
- 5) \$50,000 Damage to Rented Premises.

b. Endorsements attached to the General Liability policy including the following or their equivalent:

- 1) ISO Form CG 25 03 (05/09), Designated Construction Project(s) General Aggregate Limit, describing the project and specifying that limits apply to each project of the contractor.
- 2) ISO Form CG 20 10 (07/04), Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization, naming Owner and Architect as additional insureds.

4. Automobile Liability Insurance, with:

- a. Combined Single Limit each accident in the amount of \$1,000,000 or Contractor's actual coverage, whichever is greater; and
- b. Coverage applying to "Any Auto" or equivalent to all owned autos, hired autos, and non-owned autos.

5. Builder's Risk Insurance Policy – ISO Form CP 00 20 (10/12), Builders Risk Coverage (or equivalent form) and ISO Form CP 10 30 (10/12) Causes of Loss – Special Form, and ISO Form CP 11 20 (06/07) Builders Risk – Collapse During Construction (or equivalent form) with Limits of Insurance in the amount of the Contract Sum.

- a. Policy will cover materials stored at temporary storage locations and materials in transit.
- b. Include Owner and Subcontractors as additional insureds.
- c. Policy will be subject to a deductible of not less than \$5,000 per occurrence which will be the responsibility of Contractor and will not be included in the Cost of the Work or be a reimbursable expense.

B. Contractor will provide evidence of such insurance to Owner as follows:

1. Deliver to Owner a Certificate of Insurance on ACORD 25 (2010/05) or equivalent:

- a. Listing Owner as the Certificate Holder and Owner and Architect as Additional Insureds on general liability and any excess liability policies;
- b. Attaching the endorsements set forth above for additional insured on general liability (CG 20 10 07/04) and Designated Construction Project Aggregate Limit (CG 25 03 05/09).
- c. Identifying the Project.
- d. Listing the insurance companies providing coverage. All companies must be rated in A.M. Best Company's Key Rating Guide – Property-Casualty, current edition, at a

rating B+ Class VII or better. Companies that are not rated are not acceptable.

- e. Bearing the name, address, and telephone number of the producer and signed by an authorized representative of the producer. The signature may be original, stamped, or electronic. A faxed or digital copy is also acceptable.
- 2. Deliver to Owner a Certificate of Insurance on ACORD 27, Evidence of Property Insurance, for the Builders Risk Insurance Policy attaching the endorsement giving evidence that the Owner and all Subcontractors are listed as additional insureds on the Builders Risk Policy.
- C. Contractor will maintain, from commencement of the Work, Insurance coverage required herein as follows:
  - 1. Commercial General Liability Insurance through expiration of warranty period specified in Section 12.2, Paragraph B. including completion of any warranty repairs;
  - 2. Builders' Risk Insurance through Substantial Completion; and
  - 3. All other insurance through final payment.
- D. In the event of a loss, or upon request by Owner, Contractor will provide Owner with a copy of required insurance policies above.
- E. Owner reserves the right to reject any insurance company, policy, endorsement, or certificate of insurance with or without cause.
- F. Owner may, in writing and at its sole discretion, modify the insurance requirements.

#### **ITEM 5 - STATE SPECIFIC SUPPLEMENTARY CONDITIONS**

##### **Hawaii**

N/A

END OF DOCUMENT