



AIA Document A101

**Standard Form of Agreement Between
Owner and Contractor**

where the basis of payment is a

STIPULATED SUM

1987 EDITION

***THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.***

*The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted
in this document by reference. Do not use with other general conditions unless this document is modified..*

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the day of in the year of Two Thousand and Seven.

BETWEEN the Owner:

(Name and address)

Maine Turnpike Authority
430 Riverside Street
Portland, Maine 04103

and the Contractor:

(Name and address)

The Project is:

(Name and location)

Maine Turnpike Authority Administration Building
Congress Street
Portland, Maine

The Architect is:

(Name and address)

SMRT, Inc.
144 Fore Street
Portland, Maine 04104

The Owner and Contractor agree as set forth below.

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ARTICLE 1
THE CONTRACT DOCUMENTS

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

ARTICLE 2
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

The Contractor shall execute the entire Work described in the Contract Documents.

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be the date of this Agreement, as first written above. A written notice to proceed bearing this date shall also be issued to the Contractor, and the Contractor shall not commence Work prior to receipt of this notice.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

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

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of _____ Dollars (\$ _____), subject to additions and deductions as provided in the Contract Documents.

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

(State the numbers or other identification of accepted alternates if decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement. attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

NA

4.3 Unit prices, if any, are as follows:

ARTICLE 5
PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.3 Provided an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment to the Contractor not later than the _____ day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than _____ days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This Schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of *seven and one-half percent (7.5 %)*. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less retainage of *seven and one-half percent (7.5 %)*;

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to *one hundred percent (100 %)* of the Contract Sum, less such amounts as the Architect shall determine for *incorrect* Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

(if it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6. 1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

NA

ARTICLE 6
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any)

Payments due and unpaid under the Contract shall bear no interest (0%).

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Other provisions: *NA*

ARTICLE 8
TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9
ENUMERATION OF CONTRACT
DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____ and are as follows:

Document	Title	Pages
-----------------	--------------	--------------

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
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9.1.5 The Drawings are as follows, and are dated _____ unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
---------------	--------------	-------------

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
---------------	-------------	--------------

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

9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER:
MAINE TURNPIKE AUTHORITY

By: _____
Chairman

Date of Signature: _____

ATTEST:

Secretary

CONTRACTOR:

By: _____
Contractor

Date of Signature: _____

WITNESS:

MAINE DEPARTMENT OF TRANSPORTATION

In accordance with Section 4(c) of Chapter 69 of the Private and Special Law of Maine 1941, as amended, the foregoing Contract Agreement between the Maine Turnpike Authority and _____ of _____ is hereby approved.

MAINE DEPARTMENT OF TRANSPORTATION

Commissioner

APPROVAL DATE: _____



Performance Bond

AIA Document A312 - Electronic Format

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

Any singular reference to Contract, Surety, Owner or Other Party Shall be considered plural where applicable.

CONTRACTOR. *(Name and Address):*

SURETY *(Name and Principal Place of Business)*

OWNER. *(Name and Address):*

CONSTRUCTION CONTRACT

Date:

Amount:

Description *(Name and Location):*

BOND

Date *(Not earlier than Construction Contract Date):*

Amount:

Modifications to this Bond:

None

See Page

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

(Any additional signatures appear on the last page)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE *(Architect, Engineer or other party):*

AIA DOCUMENT A312 • PERFORMANCE BOND AND PAYMENT BOND • DECEMBER 1984 ED. • AIA © • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C., 20006-5292 • THIRD PRINTING • MARCH 1987. WARNING; Unlicensed photocopying violates U.S. copyright laws and is subject to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified

contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting

from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the

construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:



Payment Bond

AIA Document A312 - Electronic Format

CONTRACTOR *(Name and Address):*

SURETY *(Name and Principal Place of Business):*

OWNER *(Name and Address):*

CONSTRUCTION CONTRACT

Date:

Amount:

Description *(Name and Location):*

BOND

Date *(Not earlier than Construction Contract Date):*

Amount:

Modifications to this Bond:

None

See Page

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

(Any additional signatures appear on the last page)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE *(Architect, Engineer or other party):*

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1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this

Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.



AIA Document A201

General Conditions of the Contract for Construction

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION
WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION*

1987 EDITION

TABLE OF ARTICLES

- | | |
|--|--|
| 1. GENERAL PROVISIONS | 8. TIME |
| 2. OWNER | 9. PAYMENTS AND COMPLETION |
| 3. CONTRACTOR | 10. PROTECTION OF PERSONS AND PROPERTY |
| 4. ADMINISTRATION OF THE CONTRACT | 11. INSURANCE AND BONDS |
| 5. SUBCONTRACTORS | 12. UNCOVERING AND CORRECTION OF WORK |
| 6. CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS | 13. MISCELLANEOUS PROVISIONS |
| 7. CHANGES IN THE WORK | 14. TERMINATION OR SUSPENSION OF THE
CONTRACT |

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INDEX

Acceptance of Nonconforming Work	9.6.6, 9.9.3, 12.3
Acceptance of Work	9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3
Access to Work	3.16, 6.2.1, 12.1
Accident Prevention	4.2.3, 10
Acts and Omissions	3.2.1, 3.2.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.2, 4.3.9, 8.3.1, 10.1.4, 10.2.5, 13.4.2, 13.7, 14.1
Addenda	1.1.1, 3.11
Additional Cost, Claims for	4.3.6, 4.3.7, 4.3.9, 6.1.1, 10.3
Additional Inspections and Testing	4.2.6, 9.8.2, 12.2.1, 13.5
Additional Time, Claims for	4.3.6, 4.3.8, 4.3.9, 8.3.2
ADMINISTRATION OF THE CONTRACT	3.3.3, 4.9.4, 9.5
Advertisement or Invitation to Bid	1.1.1
Aesthetic Effect	4.2.13, 4.5.1
Allowances	3.8
All-risk Insurance	11.3.1.1
Applications for Payment	4.2.5, 7.3.7, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.8.3, 9.10.1, 9.10.3, 9.10.4, 11.1.3, 14.2.4
Approvals	2.4, 3.3, 3.3.5, 3.10.2, 3.12.4 through 3.12.8, 3.18.3, 4.2.7, 9.3.2, 11.3.1.4, 13.4.2, 13.5
Arbitration	4.1.4, 4.3.2, 4.3.4, 4.4.4, 4.5, 8.3.1, 10.1.2, 11.3.9, 11.3.10
Architect	4.1
Architect, Definition of	4.1.1
Architect, Extent of Authority	2.4, 3.12.6, 4.2, 4.3.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.2.1, 7.3.6, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8.2, 9.8.3, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4
Architect, Limitations of Authority and Responsibility	3.3.3, 3.12.8, 3.12.11, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 4.3.2, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6
Architect's Additional Services and Expenses	2.4, 9.8.2, 11.3.1.1, 12.2.1, 12.2.4, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract	4.2, 4.3.6, 4.3.7, 4.4, 9.4, 9.5
Architect's Approvals	2.4, 3.5.1, 3.10.2, 3.12.6, 3.12.8, 3.18.3, 4.2.7
Architect's Authority to Reject Work	3.5.1, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright	1.3
Architect's Decisions	4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.2, 4.3.6, 4.4.1, 4.4.4, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.2, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4
Architect's Inspections	4.2.2, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1, 13.5
Architect's Instructions	4.2.6, 4.2.7, 4.2.8, 4.3.7, 7.4.1, 12.1, 13.5.2
Architect's Interpretations	4.2.11, 4.2.12, 4.3.7
Architect's On-Site Observations	4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5
Architect's Project Representative	4.2.10
Architect's Relationship with Contractor	1.1.2, 3.2.1, 3.2.2, 3.3.3, 3.5.1, 3.7.3, 3.11, 3.12.8, 3.12.11, 3.16, 3.18, 4.2.3, 4.2.4, 4.2.6, 4.2.12, 5.2, 6.2.2, 7.3.4, 9.8.2, 11.3.7, 12.1, 13.5
Architect's Relationship with Subcontractors	1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations	9.4.2, 9.5.1, 9.10.1
Architect's Site Visits	4.2.2, 4.2.5, 4.2.9, 4.3.6, 9.4.2, 9.5.1, 9.8.2, 9.9.2, 9.10.1, 13.5
Asbestos	10.1
Attorneys' Fees	3.18.1, 9.10.2, 10.1.4
Award of Separate Contracts	6.1.1
Award of Subcontracts and Other Contracts for Portions of the Work	5.2
Basic Definitions	1.1
Bidding Requirements	1.1.1, 1.1.7, 5.2.1, 11.4.1
Boiler and Machinery Insurance	11.3.2
Bonds, Lien	9.10.2
Bonds, Performance and Payment	7.3.6.4, 9.10.3, 11.3.9, 11.4
Building Permit	3.7.1
Capitalization	1.4
Certificate of Substantial Completion	9.8.2
Certificates for Payment	4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.8.3, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Certificates of Inspection, Testing or Approval	3.12.11, 13.5.4
Certificates of Insurance	9.3.2, 9.10.2, 11.1.3
Change Orders	1.1.1, 2.4.1, 3.8.2.4, 3.11, 4.2.8, 4.3.3, 5.2.3, 7.1, 7.2, 7.3.2, 8.3.1, 9.3.1.1, 9.10.3, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2
Change Orders, Definition of	7.2.1
Changes	7.1
CHANGES IN THE WORK	3.11, 4.2.8, 7.8.3.1, 9.3.1.1, 10.1.3
Claim, Definition of	4.3.1
Claims and Disputes	4.3, 4.4, 4.5, 6.2.5, 8.3.2, 9.3.1.2, 9.3.1.3, 9.10.4, 10.1.4
Claims and Timely Assertion of Claims	4.5.6
Claims for Additional Cost	4.3.6, 4.3.7, 4.3.9, 6.1.1, 10.3
Claims for Additional Time	4.3.6, 4.3.8, 4.3.9, 8.3.2
Claims for Concealed or Unknown Conditions	4.3.6
Claims for Damages	3.18, 4.3.9, 6.1.1, 6.2.5, 8.3.2, 9.5.1.2, 10.1.4
Claims Subject to Arbitration	4.3.2, 4.4.4, 4.5.1
Cleaning Up	3.15, 6.3
Commencement of Statutory Limitation Period	13.7
Commencement of the Work, Conditions Relating to	2.1.2, 2.2.1, 3.2.1, 3.2.2, 3.7.1, 3.10.1, 3.12.6, 4.3.7, 5.2.1, 6.2.2, 8.1.2, 8.2.2, 9.2, 11.1.3, 11.3.6, 11.4.1
Commencement of the Work, Definition of	8.1.2
Communications Facilitating Contract Administration	3.9.1, 4.2.4, 5.2.1
Completion, Conditions Relating to	3.11, 3.15, 4.2.2, 4.2.9, 4.3.2, 9.4.2, 9.8, 9.9.1, 9.10, 11.3.5, 12.2.2, 13.7.1
COMPLETION, PAYMENTS AND	9
Completion, Substantial	4.2.9, 4.3.5.2, 8.1.1, 8.1.3, 8.2.3, 9.8, 9.9.1, 12.2.2, 13.7
Compliance with Laws	1.3, 3.6, 3.7, 3.13, 4.1.1, 10.2.2, 11.1, 11.3, 13.1, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3
Concealed or Unknown Conditions	4.3.6
Conditions of the Contract	1.1.1, 1.1.7, 6.1.1
Consent, Written	1.3.1, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.5.5, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 10.1.3, 11.3.1, 11.3.1.4, 11.3.11, 13.2, 13.4.2
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS	1.1.4, 6
Construction Change Directive, Definition of	7.3.1
Construction Change Directives	1.1.1, 4.2.8, 7.1, 7.3, 9.3.1.1
Construction Schedules, Contractor's	3.10, 6.1.3
Contingent Assignment of Subcontracts	5.4
Continuing Contract Performance	4.3.4
Contract, Definition of	1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE	4.3.7, 5.4.1.1, 14
Contract Administration	3.3.3, 4.9.4, 9.5
Contract Award and Execution, Conditions Relating to	3.7.1, 3.10, 5.2, 9.2, 11.1.3, 11.3.6, 11.4.1
Contract Documents, The	1.1, 1.2, 7
Contract Documents, Copies Furnished and Use of	1.3, 2.2.5, 5.3
Contract Documents, Definition of	1.1.1
Contract Performance During Arbitration	4.3.4, 4.5.3
Contract Sum	3.8, 4.3.6, 4.3.7, 4.4.4, 5.2.3, 6.1.3, 7.2, 7.3, 9.1, 9.7, 11.3.1, 12.2.4, 12.3, 14.2.4
Contract Sum, Definition of	9.1
Contract Time	4.3.6, 4.3.8, 4.4.4, 7.2.1, 3.7.3, 8.2.1, 8.3.1, 9.7, 12.1.1
Contract Time, Definition of	8.1.1

CONTRACTOR	3
Contractor, Definition of	3.1, 6.1.2
Contractor's Bid	1.1.1
Contractor's Construction Schedules	3.10, 6.1.3
Contractor's Employees	3.3.2, 3.4.2, 3.8.1, 3.9, 3.18, 4.2.3, 4.2.6, 8.1.2, 10.2, 10.3, 11.1.1, 14.2.1.1
Contractor's Liability Insurance	11.1
Contractor's Relationship with Separate Contractors and Owner's Forces	2.2.6, 3.12.5, 3.14.2, 4.2.4, 6, 12.2.5
Contractor's Relationship with Subcontractors	1.2.4, 3.3.2, 3.18.1, 3.18.2, 5.2, 5.3, 5.4, 9.6.2, 11.3.7, 11.3.8, 14.2.1.2
Contractor's Relationship with the Architect	1.1.2, 3.2.1, 3.2.2, 3.3.3, 3.5.1, 3.7.3, 3.11, 3.12.8, 3.16, 3.18, 4.2.3, 4.2.4, 4.2.6, 4.2.12, 5.2, 6.2.2, 7.3.4, 9.8.2, 11.3.7, 12.1, 13.5
Contractor's Representations	1.2.2, 3.5.1, 3.12.7, 6.2.2, 8.2.1, 9.3.3
Contractor's Responsibility for Those Performing the Work	3.3.2, 3.18, 4.2.3, 10
Contractor's Review of Contract Documents	1.2.2, 3.2, 3.7.3
Contractor's Right to Stop the Work	9.7
Contractor's Right to Terminate the Contract	14.1
Contractor's Submittals	3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3.1, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 11.4.2, 11.4.3
Contractor's Superintendent	3.9, 10.2.6
Contractor's Supervision and Construction Procedures	1.2.4, 3.3, 3.4, 4.2.3, 8.2.2, 8.2.3, 10
Contractual Liability Insurance	11.1.1.7, 11.2.1
Coordination and Correlation	1.2.2, 1.2.4, 3.3.1, 3.10, 3.12.7, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications	1.3, 2.2.5, 3.11
Correction of Work	2.3, 2.4, 4.2.1, 9.8.2, 9.9.1, 12.1.2, 12.2, 13.7.1.3
Cost, Definition of	7.3.6, 14.3.5
Costs	2.4, 3.2.1, 3.7.4, 3.8.2, 3.15.2, 4.3.6, 4.3.7, 4.3.8.1, 5.2.3, 6.1.1, 6.2.3, 6.3, 7.3.3.3, 7.3.6, 7.3.7, 9.7, 9.8.2, 9.10.2, 11.3.1.2, 11.3.1.3, 11.3.4, 11.3.9, 12.1, 12.2.1, 12.2.4, 12.2.5, 13.5, 14
Cutting and Patching	3.14, 6.2.6
Damage to Construction of Owner or Separate Contractors	3.14.2, 6.2.4, 9.5.1.5, 10.2.1.2, 10.2.5, 10.3, 11.1, 11.3, 12.2.5
Damage to the Work	3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.3, 11.3
Damages, Claims for	3.18, 4.3.9, 6.1.1, 6.2.5, 8.3.2, 9.5.1.2, 10.1.4
Damages for Delay	6.1.1, 8.3.3, 9.5.1.6, 9.7
Date of Commencement of the Work, Definition of	8.1.2
Date of Substantial Completion, Definition of	8.1.3
Day, Definition of	8.1.4
Decisions of the Architect	4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.2, 4.3.6, 4.4.1, 4.4.4, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.2, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4
Decisions to Withhold Certification	9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of	2.3, 2.4, 3.5.1, 4.2.1, 4.2.6, 4.3.5, 9.5.2, 9.8.2, 9.9.1, 10.2.5, 12, 13.7.1.3
Defective Work, Definition of	3.5.1
Definitions	1.1.2.1.1, 3.1, 3.5.1, 3.12.1.3, 12.2, 3.12.3, 4.1.1.1, 4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1
Delays and Extensions of Time	4.3.1, 4.3.8.1, 4.3.8.2, 6.1.1, 6.2.3, 7.2.1, 7.3.1, 7.3.4, 7.3.5, 7.3.8, 7.3.9, 8.1.1, 8.3, 10.3.1, 14.1.1.4
Disputes	4.1.4, 4.3, 4.4, 4.5, 6.2.5, 6.3, 7.3.8, 9.3.1.2
Documents and Samples at the Site	3.11
Drawings, Definition of	1.1.5
Drawings and Specifications, Use and Ownership of	1.1.1, 1.3, 2.2.5, 3.11, 5.3
Duty to Review Contract Documents and Field Conditions	3.2
Effective Date of Insurance	8.2.2, 11.1.2

Emergencies	4.3.7, 10.3
Employees, Contractor's	3.3.2, 3.4.2, 3.8.1, 3.9, 3.18.1, 3.18.2, 4.2.3, 4.2.6, 8.1.2, 10.2, 10.3, 11.1.1, 14.2.1.1
Equipment, Labor, Materials and	1.1.3, 1.1.6, 3.4.3, 5.1, 3.8.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 11.3, 12.2.4, 14
Execution and Progress of the Work	1.1.3, 1.2.3, 3.2, 3.4.1, 3.5.1, 4.2.2, 4.2.3, 4.3.4, 4.3.8, 6.2.2, 7.1.3, 7.3.9, 8.2, 8.3, 9.5, 9.9.1, 10.2, 14.2, 14.3
Execution, Correlation and Intent of the Contract Documents	1.2, 3.7.1
Extensions of Time	4.3.1, 4.3.8, 7.2.1.3, 8.3, 10.3.1
Failure of Payment by Contractor	9.5.1.3, 14.2.1.2
Failure of Payment by Owner	4.3.7, 9.7, 14.1.3
Faulty Work (See Defective or Nonconforming Work)	
Final Completion and Final Payment	4.2.1, 4.2.9, 4.3.2, 4.3.5, 9.10, 11.1.2, 11.1.3, 11.3.5, 12.3.1, 13.7
Financial Arrangements, Owner's	2.2.1
Fire and Extended Coverage Insurance	11.3
GENERAL PROVISIONS	1
Governing Law	13.1
Guarantees (See Warranty and Warranties)	
Hazardous Materials	10.1, 10.2.4
Identification of Contract Documents	1.2.1
Identification of Subcontractors and Suppliers	5.2.1
Indemnification	3.17, 3.18, 9.10.2, 10.1.4, 11.3.1.2, 11.3.7
Information and Services Required of the Owner	2.1.2, 2.2, 4.3.4, 6.1.3, 6.1.4, 6.2.6, 9.3.2, 9.6.1, 9.6.4, 9.8.3, 9.9.2, 9.10.3, 10.1.4, 11.2, 11.3, 13.5.1, 13.5.2
Injury or Damage to Person or Property	4.3.9
Inspections	3.3.3, 3.3.4, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1, 13.5
Instructions to Bidders	1.1.1
Instructions to the Contractor	3.8.1, 4.2.8, 5.2.1, 7.12.1, 13.5.2
Insurance	4.3.9, 6.1.1, 7.3.6.4, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 11
Insurance, Boiler and Machinery	11.3.2
Insurance, Contractor's Liability	11.1
Insurance, Effective Date of	8.2.2, 11.1.2
Insurance, Loss of Use	11.3.3
Insurance, Owner's Liability	11.2
Insurance, Property	10.2.5, 11.3
Insurance, Stored Materials	9.3.2, 11.3.1.4
INSURANCE AND BONDS	11
Insurance Companies, Consent to Partial Occupancy	9.9.1, 11.3.1.1
Insurance Companies, Settlement with	11.3.1.0
Intent of the Contract Documents	1.2.3, 3.12.4, 4.2.6, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest	13.6
Interpretation	1.2.5.1, 4.1.5, 4.1.1, 4.3.1, 5.1.6, 1.2.8, 1.4
Interpretations, Written	4.2.11, 4.2.12, 4.3.7
Joinder and Consolidation of Claims Required	4.5.6
Judgment on Final Award	4.5.1, 4.5.4, 4.5.7
Labor and Materials, Equipment	1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.12.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 12.2.4, 14
Labor Disputes	8.3.1
Laws and Regulations	1.3, 3.6, 3.7, 3.13, 4.1.1, 4.5.5, 4.5.7, 9.9.1, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6
Liens	2.1.2, 4.3.2, 4.3.5, 1, 8.2.2, 9.3.3, 9.10.2
Limitation on Consolidation or Joinder	4.5.5
Limitations, Statutes of	4.5.4.2, 12.2.6, 13.7
Limitations of Authority	3.3.1, 4.1.2, 4.2.1, 4.2.3, 4.2.7, 4.2.10, 5.2.2, 5.2.4, 7.4, 11.3.10

Limitations of Liability	2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.11, 3.17, 3.18, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.10.4, 10.1.4, 10.2.5, 11.1.2, 11.2.1, 11.3.7, 13.4.2, 13.5.2
Limitations of Time, General	2.2.1, 2.2.4, 3.2.1, 3.7.3, 3.8.2, 3.10, 3.12.5, 3.15.1, 4.2.1, 4.2.7, 4.2.11, 4.3.2, 4.3.3, 4.3.4, 4.3.6, 4.3.9, 4.5.4.2, 5.2.1, 5.2.3, 6.2.4, 7.3.4, 7.4, 8.2, 9.5, 9.6.2, 9.8, 9.9, 9.10, 11.1.3, 11.3.1, 11.3.2, 11.3.5, 11.3.6, 12.2.1, 12.2.2, 13.5, 13.7
Limitations of Time, Specific	2.1.2, 2.2.1, 2.4, 3.10, 3.11, 3.15.1, 4.2.1, 4.2.11, 4.3, 4.4, 4.5, 5.3, 5.4, 7.3.5, 7.3.9, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.6.1, 9.7, 9.8.2, 9.10.2, 11.1.3, 11.3.6, 11.3.10, 11.3.11, 12.2.2, 12.2.4, 12.2.6, 13.7, 14
Loss of Use Insurance	11.3.3
Material Suppliers	1.3.1, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3.1, 9.3.1.2, 9.3.3, 9.4.2, 9.6.5, 9.10.4
Materials, Hazardous	10.1, 10.2.4
Materials, Labor, Equipment and	1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.12.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 12.2.4, 14
Means, Methods, Techniques, Sequences and Procedures of Construction	3.3.1, 4.2.3, 4.2.7, 9.4.2
Minor Changes in the Work	1.1.1, 4.2.8, 4.3.7, 7.1, 7.4
MISCELLANEOUS PROVISIONS	13
Modifications, Definition of	1.1.1
Modifications to the Contract	1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7.8.3.1, 9.7
Mutual Responsibility	6.2
Nonconforming Work, Acceptance of	12.3
Nonconforming Work, Rejection and Correction of	2.3.1, 4.3.5, 9.5.2, 9.8.2, 12, 13.7.1.3
Notice	2.3, 2.4, 3.2.1, 3.2.2, 3.7.3, 3.7.4, 3.9, 3.12.8, 3.12.9, 3.17, 4.3, 4.4.4, 4.5, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.6.1, 9.7, 9.10, 10.1.2, 10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14
Notice, Written	2.3, 2.4, 3.9, 3.12.8, 3.12.9, 4.3, 4.4.4, 4.5, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.7, 9.10, 10.1.2, 10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, 13.3, 13.5.2, 14
Notice of Testing and Inspections	13.5.1, 13.5.2
Notice to Proceed	8.2.2
Notices, Permits, Fees and	2.2.3, 3.7, 3.13, 7.3.6.4, 10.2.2
Observations, Architect's On-Site	4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5
Observations, Contractor's	1.2.2, 3.2.2
Occupancy	9.6.6, 9.8.1, 9.9, 11.3.11
On-Site Inspections by the Architect	4.2.2, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1
On-Site Observations by the Architect	4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5
Orders, Written	2.3, 3.9, 4.3.7, 7.8.2.2, 11.3.9, 12.1, 12.2, 13.5.2, 14.3.1
OWNER	2
Owner, Definition of	2.1
Owner, Information and Services Required of the	2.1.2, 2.2, 4.3.4, 6, 9, 10.1.4, 11.2, 11.3, 13.5.1, 14.1.1.5, 14.1.3
Owner's Authority	3.8.1, 4.1.3, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 7.3.1, 8.2.2, 9.3.1, 9.3.2, 11.4.1, 12.2.4, 13.5.2, 14.2, 14.3.1
Owner's Financial Capability	2.2.1, 14.1.1.5
Owner's Liability Insurance	11.2
Owner's Loss of Use Insurance	11.3.3
Owner's Relationship with Subcontractors	1.1.2, 5.2.1, 5.4.1, 9.6.4
Owner's Right to Carry Out the Work	2.4, 12.2.4, 14.2.2.2
Owner's Right to Clean Up	6.3

Owner's Right to Perform Construction and to Award Separate Contracts	6.1
Owner's Right to Stop the Work	2.3, 4.3.7
Owner's Right to Suspend the Work	14.3
Owner's Right to Terminate the Contract	14.2
Ownership and Use of Architect's Drawings, Specifications and Other Documents	1.1.1, 1.3, 2.2.5, 5.3
Partial Occupancy or Use	9.6.6, 9.9, 11.3.11
Patching, Cutting and	3.14, 6.2.6
Patents, Royalties and	3.17
Payment, Applications for	4.2.5, 9.2, 9.3, 9.4, 9.5.1, 9.8.3, 9.10.1, 9.10.3, 9.10.4, 14.2.4
Payment, Certificates for	4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.8.3, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of	4.3.7, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2
Payment, Final	4.2.1, 4.2.9, 4.3.2, 4.3.5, 9.10, 11.1.2, 11.1.3, 11.3.5, 12.3.1
Payment Bond, Performance Bond and	7.3.6.4, 9.10.3, 11.3.9, 11.4
Payments, Progress	4.3.4, 9.3, 9.6, 9.8.3, 9.10.3, 13.6, 14.2.3
PAYMENTS AND COMPLETION	9, 14
Payments to Subcontractors	5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 11.3.8, 14.2.1.2
PCB	10.1
Performance Bond and Payment Bond	7.3.6.4, 9.10.3, 11.3.9, 11.4
Permits, Fees and Notices	2.2.3, 3.7, 3.13, 7.3.6.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF	10
Polychlorinated Biphenyl	10.1
Product Data, Definition of	3.12.2
Product Data and Samples, Shop Drawings	3.11, 3.12, 4.2.7
Progress and Completion	4.2.2, 4.3.4, 8.2
Progress Payments	4.3.4, 9.3, 9.6, 9.8.3, 9.10.3, 13.6, 14.2.3
Project, Definition of the	1.1.4
Project Manual, Definition of the	1.1.7
Project Manuals	2.2.5
Project Representatives	4.2.10
Property Insurance	10.2.5, 11.3
PROTECTION OF PERSONS AND PROPERTY	10
Regulations and Laws	1.3, 3.6, 3.7, 3.13, 4.1.1, 4.5.5, 4.5.7, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14
Rejection of Work	3.5.1, 4.2.6, 12.2
Releases of Waivers and Liens	9.10.2
Representations	1.2.2, 3.5.1, 3.12.7, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives	2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Resolution of Claims and Disputes	4.4, 4.5
Responsibility for Those Performing the Work	3.3.2, 4.2.3, 6.1.3, 6.2, 10
Retainage	9.3.1, 9.6.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor	1.2.2, 3.2, 3.7.3, 3.12.7
Review of Contractor's Submittals by	
Owner and Architect	3.10.1, 3.10.2, 3.11, 3.12, 4.2.7, 4.2.9, 5.2.1, 5.2.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor	3.12.5
Rights and Remedies	1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.6, 4.5, 5.3, 6.1, 6.3, 7.3.1, 8.3.1, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14
Royalties and Patents	3.17

Rules and Notices for Arbitration	4.5.2
Safety of Persons and Property	10.2
Safety Precautions and Programs	4.2.3, 4.2.7, 10.1
Samples, Definition of	3.12.3
Samples, Shop Drawings, Product Data and	3.11, 3.12, 4.2.7
Samples at the Site, Documents and	3.11
Schedule of Values	9.2, 9.3.1
Schedules, Construction	3.10
Separate Contracts and Contractors	1.1.4, 3.14.2, 4.2.4, 4.5.5, 6.11.3.7, 12.1.2, 12.2.5
Shop Drawings, Definition of	3.12.1
Shop Drawings, Product Data and Samples	3.11, 3.12, 4.2.7
Site, Use of	3.13, 6.1.1, 6.2.1
Site Inspections	1.2.2, 3.3.4, 4.2.2, 4.2.9, 4.3.6, 9.8.2, 9.10.1, 13.5
Site Visits, Architect's	4.2.2, 4.2.5, 4.2.9, 4.3.6, 9.4.2, 9.5.1, 9.8.2, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing	4.2.6, 12.2.1, 13.5
Specifications, Definition of the	1.1.6
Specifications, The	1.1.1, 1.1.6, 1.1.7, 1.2.4, 1.3.3, 1.1
Statutes of Limitations	4.5.4.2, 12.2.6, 13.7
Stopping the Work	2.3, 4.3.7, 9.7, 10.1.2, 10.3, 14.1
Stored Materials	6.2.1, 9.3.2, 10.2.1, 11.3.1.4, 12.2.4
Subcontractor, Definition of	5.1.1
SUBCONTRACTORS	5
Subcontractors, Work by	1.2.4, 3.3.2, 3.12.1, 4.2.3, 5.3, 5.4
Subcontractual Relations	5.3, 5.4, 9.3.1.2, 9.6.2,
	9.6.3, 9.6.4, 10.2.1, 11.3.7, 11.3.8, 14.1.1, 14.2.1.2, 14.3.2
Submittals	1.3, 3.2.3, 3.10.3, 11.3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3.1, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 11.1.3
Subrogation, Waivers of	6.1.1, 11.3.5, 11.3.7
Substantial Completion	4.2.9, 4.3.5.2, 8.1.1, 8.1.3,
	8.2.3, 9.8, 9.9.1, 12.2.1, 12.2.2, 13.7
Substantial Completion, Definition of	9.8.1
Substitution of Subcontractors	5.2.3, 5.2.4
Substitution of the Architect	4.1.3
Substitutions of Materials	3.5.1
Sub-subcontractor, Definition of	5.1.2
Subsurface Conditions	4.3.6
Successors and Assigns	13.2
Superintendent	3.9, 10.2.6
Supervision and Construction Procedures	1.2.4, 3.3, 3.4,
	4.2.3, 4.3.4, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 10, 12, 14
Surety	4.4.1, 4.4.4, 5.4.1.2, 9.10.2, 9.10.3, 14.2.2
Surety, Consent of	9.9.1, 9.10.2, 9.10.3
Surveys	2.2.2, 3.18.3

Suspension by the Owner for Convenience	14.3
Suspension of the Work	4.3.7, 5.4.2, 14.1.1.4, 14.3
Suspension or Termination of the Contract	4.3.7, 5.4.1.1, 14
Taxes	3.6, 7.3.6.4
Termination by the Contractor	14.1
Termination by the Owner for Cause	5.4.1.1, 14.2
Termination of the Architect	4.1.3
Termination of the Contractor	14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT	14
Tests and Inspections	3.3.3, 4.2.6, 4.2.9, 9.4.2, 12.2.1, 13.5
TIME	8
Time, Delays and Extensions of	4.3.8, 7.2.1, 8.3
Time Limits, Specific	2.1.2, 2.2.1, 2.4, 3.10, 3.11, 3.15.1, 4.2.1, 4.2.11, 4.3, 4.4, 4.5, 5.3, 5.4, 7.3.5, 7.3.9, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.6.1, 9.7, 9.8.2, 9.10.2, 11.1.3, 11.3.6, 11.3.10, 11.3.11, 12.2.2, 12.2.4, 12.2.6, 13.7, 14
Time Limits on Claims	4.3.2, 4.3.3, 4.3.6, 4.3.9, 4.4, 4.5
Title to Work	9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK	12
Uncovering of Work	12.1
Unforeseen Conditions	4.3.6, 8.3.1, 10.1
Unit Prices	7.1.4, 7.3.3.2
Use of Documents	1.1.1.3, 2.2.5, 3.12.7, 5.3
Use of Site	3.13, 6.1.1, 6.2.1
Values, Schedule of	9.2, 9.3.1
Waiver of Claims: Final Payment	4.3.5, 4.5.1, 9.10.3
Waiver of Claims by the Architect	13.4.2
Waiver of Claims by the Contractor	9.10.4, 11.3.7, 13.4.2
Waiver of Claims by the Owner	4.3.5, 4.5.1, 9.9.3, 9.10.3, 11.3.3, 11.3.5, 11.3.7, 13.4.2
Waiver of Liens	9.10.2
Waivers of Subrogation	6.1.1, 11.3.5, 11.3.7
Warranty and Warranties	3.5, 4.2.9,
	4.3.5.3, 9.3.3, 9.8.2, 9.9.1, 12.2.2, 13.7.1.3
Weather Delays	4.3.8.2
When Arbitration May Be Demanded	4.5.4
Work, Definition of	1.1.3
Written Consent	1.3.1, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.5.5, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 10.1.3, 11.3.1, 11.3.1.4, 11.3.11, 13.2, 13.4.2
Written Interpretations	4.2.11, 4.2.12, 4.3.7
Written Notice	2.3, 2.4, 3.9, 3.12.8, 3.12.9, 4.3, 4.4.4,
	4.5.5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.7, 9.10, 10.1.2,
	10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, 13.3, 13.5.2, 14
Written Orders	2.3, 3.9, 4.3.7, 7.8.2.2, 11.3.9, 12.1, 12.2, 13.5.2, 14.3.1

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

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

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

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

1.4 CAPITALIZATION

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

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 DEFINITION

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

Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the

Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work 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. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

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

3.7 PERMITS, FEES AND NOTICES

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

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

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

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- .2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

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

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to

the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

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

3.14 CUTTING AND PATCHING

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

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

3.15 CLEANING UP

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

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such

giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of onsite observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance

of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

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

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits On Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

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

.3 terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

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

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data

substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

4.5.2 Rules and Notices for Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

4.5.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of

the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by

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

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

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

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and

proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

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

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

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

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

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

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

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

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

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

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

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 **TIME**

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

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

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

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

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

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

ARTICLE 9 **PAYMENTS AND COMPLETION**

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

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

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having

provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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 the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The 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 Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the 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 the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

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

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a

Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3, and 9.6.4.

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

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

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

9.8.2 When the Contractor considers that the Work, or a portion thereof which the owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial

Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the

remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

ARTICLE 10 **PROTECTION OF PERSONS AND PROPERTY**

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has 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 not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to

attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.1.4.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

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

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

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

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall

exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the

insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 **Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with

an arbitration award in which case the procedure shall be as provided in Paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.5. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.11 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 **UNCOVERING AND CORRECTION OF WORK**

12.1 UNCOVERING OF WORK

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

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe

Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to pur-

chase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

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

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

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property

prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date

for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

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

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private

sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

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

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the

Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

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

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures.

The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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

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

13.6 INTEREST

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

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of

issuance of the final Certificate for Payment; and

- .3 **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction;
- .2 an act of government, such as a declaration of national emergency, making material unavailable;
- .3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for

completion, or 120 days in any 365-day period, whichever is less;

- or
- .5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

SUPPLEMENTARY GENERAL CONDITIONS

GENERAL CONDITIONS

The "General Conditions of the Contract for Construction", AIA Document A-201, Fourteenth Edition (1987), Articles 1 through 14 inclusive, is a part of this Contract.

SUPPLEMENTARY CONDITIONS

The following supplements modify, delete and/or add to the General Conditions. Where any article, paragraph or subparagraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such article, paragraph or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any article, paragraph, or subparagraph in the General Conditions is amended, voided or superseded by any of the following paragraphs, the provisions of such article, paragraph or subparagraph not so amended, voided, or superseded shall remain in effect.

MODIFICATIONS TO VARIOUS ARTICLES OF THE AIA GENERAL CONDITIONS

ARTICLE 1 - GENERAL PROVISIONS

1.1.2 Change the fourth sentence to read:

Except as provided in Paragraph 3.18, nothing contained in the Contract Documents shall be construed to create any contractual relationship (1) between the Architect and the Contractor, (2) between the Owner and/or the Architect and a Subcontractor or Sub-subcontractor, (3) between any persons or entities other than the Owner and the Contractor.

1.2.1 Add the following at the end of the first sentence:

One of the signed sets shall be deposited with the Architect.

1.2.3 Add the following:

All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written addendum to the Contract.

1.2.4 Add the following:

The Contractor and all subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the Parts of the Project Manual and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results.

1.2.6-

1.2.12 Add the following new subparagraphs:

1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.7 Where codes, standards, requirements, and publications of public and private bodies are referred to in the Specifications, references shall be understood to be the latest revision prior to the date of receiving bids, except where otherwise indicated.

1.2.8 Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of good quality for the intended use and consistent with the quality of the surrounding work and of the construction of the Project generally.

1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.10 The Mechanical, Electrical and Fire Protection Drawings are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of work. Such work shall be installed without additional cost to the Owner to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall review with other trades the exact alignment, physical location and configuration of the Mechanical, Electrical and Fire Protection installations and demonstrating to the Contractor's satisfaction that the installations will comply with the preceding sentence.

1.2.11 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Architect in the design of the Project or Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided in subparagraph 4.3.6.

1.2.12 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

ARTICLE 2 - OWNER

2.1.2 Delete subparagraph 2.1.2

2.2.1 Delete subparagraph 2.2.1

2.2.2 Add the following:

Physical characteristics and legal limitations are construed to mean property lines, restrictions, and a permanent benchmark. All other grades, lines, levels and benchmarks shall be established and maintained by the Contractor.

2.2.4 Change to read as follows:

Information or services required of the Owner hereunder shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.2.5 Delete subparagraph 2.2.5 in its entirety and substitute the following:

The Owner will furnish the Contractor the following number of copies of drawings and specifications free of charge:

(a) 10 complete sets of drawings and specifications.

2.2.6 Add the following paragraph:

The Owner shall forward all instructions to the Contractor through the Architect.

2.4.1 In the third sentence of subparagraph 2.4.1, replace the words "Change Order" with the words "Construction Change Directive," and delete the fourth sentence.

ARTICLE 3 - CONTRACTOR

3.2.4-

3.2.5 Add the following subparagraphs:

3.2.4 The Contractor shall give the Architect timely notice of any additional instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

3.2.5 The Contractor shall not proceed with any work not clearly and consistently defined in sufficient detail in the Contract Documents, but shall request additional instructions from the Architect as provided in subparagraph 3.2.4. If the Contractor proceeds with such work without obtaining further instructions, he shall correct the incorrect work at his own expense.

3.3.5 Add the following subparagraph:

3.3.5 The Contractor shall 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. The Contractor and all Subcontractors shall, at all times, afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of work and the storage of materials.

3.4.1 Add the following sentence to the end of subparagraph 3.4.1:

The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified.

3.5.2-

3.5.9 Add the following new subparagraphs:

3.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the 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 the 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 shall be furnished at the Contractor's expense. This provision shall not require the 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 the Contractor's expense.

3.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, the Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by the Contractor and approved in writing by the Architect as provided in subparagraph 3.5.4.

3.5.3.1 The Owner, at its sole discretion, may decline to incur the expense of review of Contractor proposed substitutions, unless such proposed substitution proposes a cost savings to the Owner equal to or greater than the anticipated cost of review.

3.5.4 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Architect in writing of the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

3.5.5. In requesting approval of deviation or substitutions, the Contractor shall provide evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Architect, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Architect shall reject such substitution or deviation without further investigation.

3.5.6 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve proposed substitutes which, in the Architects opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the project. In order to permit coordinated design of color and finishes the Contractor shall furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

3.5.7 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was made at the written request or direction of the Owner or the Architect.

3.5.8 The warranty provided in this paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.5.9 The Contractor shall procure and deliver to the Architect, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

3.6.1 Delete and replace with the following:

The Maine Turnpike Authority, an agency of the State of Maine, is exempt from payment of sales tax, under the present Maine Sales Tax Law, on any property purchased by it at retail for consumption. The Maine tax Bureau has interpreted this to mean that all materials purchased by the Contractor which ultimately remain the property of the Maine Turnpike Authority, even though in a changed form, are not subject to the sales tax.

3.7.1 Delete and replace with the following:

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

3.9.1 Change the first sentence to read as follows:

The Contractor shall employ a competent superintendent, reasonably acceptable to the Owner, and necessary assistants who shall be in attendance at the Project site full time during the progress of the Work until the date of Substantial Completion, and for such additional time thereafter as the Architect may determine to be necessary for the expeditious completion of the Work. The Contractor shall remove the superintendent if requested to do so in writing by the Owner, and shall promptly replace him with a competent person reasonably acceptable to the Owner.

3.9.2 Add the following subparagraph.

3.9.2 The Contractor shall arrange for and attend job meetings with the Architect and such other persons as the Architect may from time to time wish to have present. Meetings shall be held twice monthly, one of which meetings shall coincide with final review of the Contractor's monthly pay application. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meeting if the representative's presence is requested by the Architect. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

3.10.4 Add the following subparagraph:

The Owner's anticipated project completion date, as stated in the Bid Form for General Contractors, is fixed. There is no advantage to the Owner for an early finish, and there will be no rewards for early completion or claims accepted for delays based on Contractor-established early completion dates.

3.12.7 Change to read as follows:

By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples and similar submittals the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.

3.13.1 Change to read as follows:

The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Architect and shall not unreasonably encumber the premises with his materials. The Owner shall not be liable to the Contractor, the Subcontractors, their employees or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

3.13.2 Add the following subparagraph:

3.13.2 The Contractor shall maintain clear access for use by any emergency vehicle at all times. Maintain clear paths of egress from building exits at all times. Remove snow and ice as necessary to maintain said clear access for emergency vehicles and said clear paths of egress in areas limited to the Contractor's use.

3.18 Change the title of paragraph 3.18 to "INDEMNIFICATION AND COVENANT NOT TO SUE"; delete the words "but only to the extent" in the first sentence of subparagraph 3.18.1; change subparagraph 3.18.3 as follows and add new subparagraphs 3.18.4 and 3.18.5 as follows:

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents or employees of any of them arising out of (1) the preparation of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) directions or instructions given by the Architect, the Architect's consultants and agents or employees of any of them, provided such instruction or directions are the primary cause of the injury or damage.

3.18.4 In consideration of the Contractor's undertaking to indemnify and hold harmless the Architect, its agents or employees, in accordance with this Section 3.18, the Architect agrees that he will not bring any civil suit, action or other proceeding in law, equity or arbitration against the Contractor, or the officers, employees, agents, and servants of the Contractor, for or on account of any action which the Architect may have arising out of or in any manner connected with the Work, except to enforce the provisions of this Section 3.18; and the Contractor, or any successor, assign or subrogee of the Contractor agrees that he will not bring any civil suit, action or other proceeding in law, equity or arbitration against the Architect, or the officers, employees, agents and servants of the Architect, for the enforcement of any action which the Contractor may have arising out of or in any manner connected with the Work.

3.18.5 The Contractor hereby agrees that neither he nor anyone else performing Work under this Contract shall have any claim against the Owner or the Architect for damages of any kind on account of delay in the commencement of the Work and/or any delay or suspension of the Work or any portion thereof, whether such delay is caused by the Owner, the Architect or otherwise, and that the sole remedy for any such delay and/or suspension will be an extension of time as provided in the Contract Documents.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.2.2 In the first sentence delete the words "at intervals appropriate to the stage of construction," and insert the following words in their place "twice monthly."

4.2.7 In subparagraph 4.2.7, add to the end of the first sentence, "and only to the extent which the Architect believes desirable to protect the Owner's interest." Change the second sentence to read:

The Architect's action will be taken with reasonable promptness, while allowing sufficient time in the Architect's professional judgment to permit adequate review, taking into account the time periods set forth in the latest schedule prepared by the Contractor and reviewed by the Architect pursuant to subparagraph 8.2.4 through 8.2.10.

In the fifth sentence, delete the words "unless otherwise specifically stated by the Architect."

4.2.8 Add the following after the last sentence of subparagraph 4.2.8:

The Architect may, as he judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the work; such drawings or instruction may be affected by a notice to the Contractor, and provided such drawings or instructions are reasonable consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without additional cost or extension of contract time. If the Contractor claims additional cost or extension of contract time on account of such additional drawings or instructions, he shall give the notice provided in subparagraph 4.3.3.

4.2.10 Delete, and replace with the following:

A project representative will be employed at the site by the Architect. The project representative's duties, responsibilities and limitations of authority are as set forth in AIA Document B352, Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative, a copy of which is included herein this project manual.

4.3.5 Add the following after the last sentence: "Contractor's final lien waiver shall be made on the form contained herein this project manual."

4.3.6 Change to read as follows:

Should conditions encountered below the surface of the ground require that footings, foundations or other parts of the building or other structure be raised, lowered or changed, or if additional depth of excavation below the levels shown of the Drawings is required in order to provide proper bearing for the building or other structure or for any permanent utilities of the site or for permanent grading or other permanent site work, any change in the amount of excavation, dewatering, sheeting, protection, rock excavation, backfill, concrete or other structural work, or any other work permanently incorporated in the building shall be considered a change in the Work, and the Contract Sum shall be adjusted as provided in this Article, provided that the Work has been ordered in writing as provided in 7.1.1. There shall be no adjustment of the Contract Sum on account of other costs resulting from subsoil or water conditions including, without limitation, costs on account of delay, administration, operations, temporary construction, cave-in or collapse of excavation, or pumping.

4.3.8.1 Add the following to the end of subparagraph 4.3.8.1:

The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the Architect with such documentation relating thereto as the Architect may reasonably require.

4.4 Replace Paragraph 4.4 with the following:

4.4 REVIEW OF CLAIMS BY ARCHITECT

4.4.1 The Architect shall review Claims and may (1) defer any action with respect to all or any part of a Claim and request additional information from either party; (2) decline to render a decision for any reason which he deems appropriate (including but not limited to the fact that the Claim involves allegations of fault on the part of the Architect); or (3) render a decision on all or a part of the Claim. The Architect shall notify the parties in writing of his disposition of such Claim.

After the Architect formally renders a decision or declines to render a decision, either party may proceed in accordance with Paragraph 4.4.5. If the Architect decides that the Work relating to such Claim should proceed regardless of his disposition of such Claim, the Architect shall issue to the Contractor a written order to proceed. The Contractor shall proceed as instructed, and all rights of both parties with respect to such Claim shall be deemed to have been reserved.

4.4.5 In the event the Architect formally declines to render a decision, or if the Contractor strongly disagrees with the decision of the Architect as rendered under the terms of 4.4, an Alternative Dispute Resolution (ADR) process as described in 4.4.6, 4.4.7 and 4.4.8 shall be implemented prior to arbitration. A written demand for ADR must be made within 21 days of the Architect's decision, or that decision will be final.

4.4.6 PRELIMINARY ALTERNATIVE DISPUTE RESOLUTION:

A claim becomes eligible for Preliminary ADR only after completion of the Architect's claim review process as described above. The associated costs of ADR will be agreed to mutually, and

shared equally. The Contractor and Authority shall select a mutually acceptable form of Preliminary ADR from the following options, with the preference expressed in the order of listing:

- .1 Neutral Evaluation: Jointly selected by the disputing parties, the Neutral would conduct a third party, neutral investigation of both sides of the dispute, resulting in the submission of a Report of Recommended Settlement to the disputing parties.
- .2 Dispute Review Board (DRB): The parties would jointly select two to three mutually acceptable experts who would hear and weigh a presentation of positions and evidence by the parties resulting in the issuance by the DRB of a Recommended Settlement.

Recommendations by either a Neutral or a DRB will be non-binding unless the parties mutually agree in writing at the time of process selection that such recommendations will be binding.

4.4.7 APPEAL TO THE EXECUTIVE DIRECTOR OF MAINE TURNPIKE AUTHORITY:

In the event either party rejects a recommendation resulting from ADR, the Dispute may be appealed to the Executive Director of the Authority. Once a dispute has been submitted to ADR, no party shall discuss the elements of the dispute with the Executive Director.

4.4.8 FINAL ADR – NON-BINDING MEDIATION:

At the request of the Contractor, appeal decisions rendered by the Executive Director may be appealed by the Contractor to a Final ADR process of either non-binding mediation. The costs of mediation shall be borne equally by the Contractor and the Authority. Decisions by either a mediator or an arbitrator(s) will be non-binding unless the parties mutually agree in writing at the time of process selection that such recommendations will be binding.

4.5 ARBITRATION:

- 4.5.1 Delete the word “shall” in the second sentence, and substitute in its place the word “may.”

Delete the third sentence in its entirety, and substitute the following:

“Such controversies or claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration after completing the Alternative Dispute Resolution process identified above in 4.4.5, 4.4.6, 4.4.7 and 4.4.8, and upon written demand of either party.”

- 4.5.2 Insert in the first sentence after “...Paragraph 4.4” and before “shall” the following:

“ 4.4.5, 4.4.6, 4.4.7, and 4.4.8”

- 4.5.4 Delete in its entirety and substitute the following:

“When Arbitration May be Demanded. Demand for arbitration of any claim may not be made until the earlier of (1) the date on which the findings of Final ADR - Non-Binding Mediation have been published by the Mediator.

- 4.5.4.1 Delete in its entirety.

- 4.5.4.2 Delete in its entirety.

ARTICLE 5 - SUBCONTRACTORS

5.3.1 Add at the end of the first sentence of subparagraph 5.3.1.:

"including without limitation the obligations set forth in subparagraph 3.18.4."

ARTICLE 6: CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1.4 Delete subparagraph 6.1.4.

6.2.4 Add the following at the end of subparagraph 6.2.4:

If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

ARTICLE 7 - CHANGES IN THE WORK

7.2.3 Insert the following:

Upon request of the Owner or the Architect, the Contractor shall without cost to the Owner submit to the Architect, in such form as the Architect may require, an accurate written estimate of the cost of any proposed extra work or change. The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the Architect. The Contractor shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors.

If required by the Architect, in order to establish the exact cost of new work added or of previously required work omitted, the Contractor shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense. The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

Replace existing 7.3.3 and subparagraphs 7.3.3.1 through 7.3.3.4 with the following:

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustments shall be based on one of the following methods, as selected by the Owner.

(.1) By unit prices stated in the Contract Documents or otherwise mutually agreed upon.

(2) By Cost and Percentages estimated by the Contractor as provided in subparagraph 7.3.3 and accepted by the Owner; the Contractor's estimate shall become a fixed price which shall not be changed by any variation in the actual cost of executing the Work covered by the change.

(.3) By actual Cost determined after the Work covered by the change is completed, plus Percentage.

(.4) By submission to arbitration, which shall determine the fair value of the Work covered by the change.

As used in this paragraph, and sub-paragraphs, "Cost" shall mean the estimated or actual net increase or decrease in cost to the Contractor, Subcontractor or Sub-subcontractor for performing the work covered by the change, including actual payments for materials, equipment rentals, expendable items, wages and associated benefits to workmen and to supervisors employed full time at the site, insurance, bonds and other provable direct costs, but not including any administrative, accounting or expediting costs, or other indirect or overhead costs, or any wages or benefits of supervisory personnel not assigned full time to the site, or any amount for profit to the Contractor, Subcontractor or Sub-subcontractor.

"Percentage", as used in this paragraph, and subparagraphs, shall mean an allowance to be added to or subtracted from the "cost" in lieu of overhead and profit and of any other expense which is not included in the cost of the Work covered by the change, as defined above. Percentage for a Contractor shall be 15% of any net increase or decrease of Cost of any Work performed by his own forces and 5% for Work performed by any Subcontractors. Percentage for a Subcontractor shall be 10% of any net increase or decrease of Cost of any Work performed by his own forces and 5% for Work performed by a Sub-subcontractor.

When, in the reasonable judgement of the Architect, a series of change orders effect a single change, Percentage shall be calculated on the cumulative net increase or decrease in Cost, if any.

If the Owner elects to determine the cost of the Work as provided in method (7.3.3.1) using unit prices stated in the Contract Documents or subsequently agreed upon, the unit prices shall be subject to subparagraph 7.1.4. Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the Owner's option to require the Cost of any given change to be determined by one of the other methods stated in 7.3.3.1. If the Owner elects to determine the Cost of the change work by unit prices and the nature of the work insuch that its extent cannot readily be measured after the completion of such work or any subsequent work, the Contractor shall keep daily records, available at all times to the Architect for inspection, of the actual quantities of such work put in place, and delivery receipts or other adequate evidence, acceptable to the Architect, indicating the quantities of materials delivered to the site for use in such work put in place, and delivered to the site for use in such unit price work, and distinguishing such from other similar material delivered for use in the work included in the base Contract Sum. If so required by the Architect, materials for use in unit price work shall be stored apart from all other materials on the project.

If the Owner elects to determine the cost of the Work provided in methods (7.3.3.3) or (7.3.3.4) of subparagraph 7.3.3 or if the method of determining the cost has not been

established before the work is begun, the Contractor shall keep detailed daily records of labor and materials costs applicable to the work.

7.3.6-

7.3.9 Delete subparagraphs 7.3.6, 7.3.7 and 7.3.9.

ARTICLE 8 - TIME

8.1 Add the following subparagraphs:

8.1.5 The term "working day" as used in the Contract Documents shall mean any calendar day except Saturdays, Sundays, and legal holidays.

8.1.6 The Contractor shall plan and schedule its hours of work in conformance with applicable requirements contained within the municipal code of ordinances.

8.2 Add the following subparagraphs:

8.2.4 Within two weeks after award of the Contract, the Contractor shall submit for the Architect a Progress Schedule showing for each class of work included in the Schedule of Values, and for other sub-classes of work as may be requested by the Architect, the percentage completion to be obtained and the total dollar value of work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but not including the value of materials delivered but not in place.

8.2.5 The Progress Schedule shall be based on an orderly progression of the Work, allowing adequate time for each operation (including adequate time for submission and review of submittals), and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The Progress Schedule will be reviewed and commented on by the Architect and Owner for compliance with the requirements of this Article. Though the Contractor shall receive and act in good faith upon these review comments, the Contractor remains solely responsible for the planning and execution of work in order to complete the work within the contract time. This schedule will be updated by the Contractor on a not less than monthly basis, and it will be submitted to the Architect and Owner for review in conjunction with each monthly pay application.

8.2.6 If in any Application for Payment the total value of the completed Work in place, as certified by the Architect, is less than 90% of the total value of the Work in place estimated in the initial Progress Schedule, the Owner may, at the Owner's option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Architect.

8.2.7 If each of three successive applications, as certified by the Architect, indicate that the actual Work completed is less than 90% of the values estimated in the Progress Schedule to be completed by the respective dates, the Owner may at the Owner's option, treat the Contractor's delinquency as a default justifying the action permitted under Paragraph 14.2.

8.2.8 If the Architect has determined that the Contractor should be permitted to extend the time for completion as provided in Paragraph 8.3, the calendar dates in the Progress

Schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of Work to be completed as of the first of the month to the best of the Architect's knowledge.

8.2.9 If the Contractor fails to submit any Application for Payment in any month, the Architect shall, for the purpose of this evaluation of progress, certify separately to the actual value of the Work in place completed as of the first of the month to the best of the Architect's knowledge.

8.2.10 Nothing herein shall limit the Owner's right to liquidated or other damages for delays by the Contractor or to any other remedy which the Owner may possess under other provisions of the Contract Documents.

8.3.1 Subparagraph 8.3.1, Delete the words "pending arbitration" in line seven.

8.3.3 Change subparagraph 8.3.3 and add new subparagraph 8.3.4, 8.3.5, 8.3.6, and 8.3.7 as follows:

8.3.3 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions or to return Shop Drawings or Samples until 15 days after receipt by the Architect by registered or certified mail of written demand for such instructions, Drawings, or Samples, and not then unless such claim be reasonable.

8.3.4 No extension of time shall be granted because of seasonal or abnormal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. There shall be no increase in the Contract Sum on account of any additional costs of operations or conditions resulting therefrom.

8.3.5 The Contractor hereby agrees that the Contractor shall have no claims for damages of any kind against the Owner or the Architect on account of any delay in the commencement of the Work and/or any delay or suspension of the Work or any portion of the Work, whether such delay is caused by the Owner, the Architect or otherwise. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

8.3.6 It is hereby understood and mutually agreed by and between the Contractor and the Owner, that the date of the beginning and time for completion as specified in the contract of the work to be done hereunder are essential conditions of this contract, and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the contract form and shall be completed on the dates specified in the contract form for both substantial and final completion.

The Contractor further agrees and understands that in the event the work is not completed on these dates, which dates may be modified as provided for in these Supplementary General Conditions, the Contractor will pay to the Owner liquidated damages in the amount of \$1875.00 per calendar day that either substantial completion and/or final contract completion is not achieved. Liquidated damages for failure to attain substantial completion on the date specified will end at the final contract completion date at which time liquidated damages for failure to meet the final contract completion date may be assessed. Substantial and final completion shall be as defined herein, and as determined by the Architect. Permission for the Contractor or the Surety to continue and finish work after the contract time has expired shall not waive the Owner's rights to assess liquidated

damages. By executing the contract, the Contractor acknowledges that such an amount is not a penalty and that the daily amount set forth above is a reasonable per diem forecast of damages incurred by the Owner due to the Contractor's failure to complete the work within the contract time.

8.3.7 The Contractor agrees that the work of the contract shall be prosecuted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time allotted for completion of the work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

The Contractor further understands that the Owner's anticipated construction schedule as stated in the proposal form for General Contractors included herein this project manual is fixed. The project will not be accepted early, there will be no rewards for early completion, nor will there be any delay claims awarded for delays based on Contractor established early completion dates.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.2.1 Add the following after the first sentence:

Line items for the schedule of values shall correlate with the table of contents for this project manual. Provide at a minimum of one line item for each specification section from Division 1 through Division 16. Review and revise the schedule to the extent required for approval by the Architect and Owner.

9.3.1 Add the following after the first sentence of subparagraph 9.3.1:

The format of the Application for Payment shall be AIA Document G702, Application and Certificate for Payment along with AIA Document G703, Continuation Sheet. The number of copies shall be as directed by the Architect.

Add the following after the last sentence of subparagraph 9.3.1:

The Owner shall withhold seven and one-half percent (7.5%) of the money due the Contractor until the project under contract has been accepted by the Owner as complete, except that when the contract has been certified as Substantially Complete, the Owner may, upon request from the Contractor, reduce the amounts withheld if the Owner deems it desirable or prudent.

9.3.1.1 Add the following to the end of subparagraph 9.3.1.1:

"when such Construction Change Directives have set forth an adjustment to the Contract Sum."

9.3.2 Delete the first sentence and replace with the following:

Unless otherwise provided in the Contract Documents, payments shall be made on account of Work completed and incorporated into the construction on-site, and materials and

equipment delivered and suitably stored at the site for subsequent incorporation in the Work.

9.3.3 Change subparagraph 9.3.3 to read as follows:

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens." The Contractor further agrees that the submission of any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work to which the Contractor may then be entitled, provided that such waiver of the lien rights shall not waive the Contractor's right to payment for such work.

9.5.1 In subparagraph 9.5.1, change items .1 and .6 and add new items .8 through .18 as follows:

- .1 persistent defective work, defective work not remedied and/or damages for defective work;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that retainage currently held by the Owner would not be adequate to cover actual or liquidated damage for the anticipated delay;
- .8 failure of Contractor or Subcontractors to comply with mandatory requirements for maintaining record drawings, or for failure to submit closeout documentation. Record drawings shall be maintained on-site and available to the Architect for observation at all times;
- .9 failure to provide the Owner an opportunity to either inspect or test the work;
- .10 damage to a third party;
- .11 claims filed or reasonable evidence indicating probable filing of claims;
- .12 evidence of failure of the Contractor to make payments to subcontractors for either materials or labor;
- .13 evidence that the project cannot be completed for the unpaid balance;
- .14 evidence that the amount due the Owner will exceed the unpaid balance;
- .15 regulatory non-compliance or enforcement;
- .16 Contractor's failure to, or refusal to, remove within 24-hours after receipt of proper notice, any employee or person engaged in work of this contract;
- .17 Contractor's failure to submit required schedule or schedule updates;
- .18 all other causes that the Owner reasonably determines negatively affect their interest.

9.5.3 Add the following new paragraphs:

- 9.5.3 In no event will any materials and/or equipment be deemed delivered and suitably stored at the site, unless in the judgement of the Architect, the following requirements are met:
 - 9.5.3.2 The materials and/or equipment are in accordance with previously approved submittals and meet the requirements of the Contract Documents.
 - 9.5.3.3 Specific detailed documentation is available to the Architect upon request which clearly establishes that materials and/or equipment is for use on this Project.
 - 9.5.3.4 Documentation is available to the Architect upon request which clearly establishes that materials and/or equipment for use on this project is covered by insurance.
 - 9.5.3.5 The Contractor can and will adequately protect the materials and/or equipment until they are incorporated in the work.
 - 9.5.3.6 The Contractor will submit notarized release of lien waivers from applicable subcontractor(s) and major material supplier(s).

9.6.1 Delete and replace with the following:

After the Architect has issued a Certificate for Payment, the Owner shall make payment within 30 days in the manner provided in the Contract Documents, and shall so notify the Architect.

9.6.7 Add the following 9.6.7:

No payments due the Contractor will be adjusted for inflation. No interest shall be due and payable on any payment due the Contractor, except that the Owner will pay statutory interest on uncontested final payment for any period of time that extends beyond 60 days of the date of receipt of all conforming closeout documentation. The preceding exception expressly does not include payments regarding pending issues, a dispute or claim.

9.7 Delete this paragraph and subparagraph 9.7.1 in their entirety.

9.8.1 Add at the end of subparagraph 9.8.1:

and only minor items that can be corrected or completed without any material interference with the Owner's use of the Work remain to be corrected or completed.

9.8.3 Delete the words "or designated portion thereof."

9.10.2 Add the following .1

- .1 With reference to item 5 in 9.10.2 above, the Contractor shall submit a "FINAL LIEN AND CLAIM AFFIDAVIT" in the form included in this project manual.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

- 10.1.2-
10.1.4 Delete subparagraphs 10.1.2, 10.1.3 and 10.1.4.
- 10.2.1.2 In subparagraph 10.2.1.2, delete the "and" at the end of the subparagraph.
- 10.2.1.3 In subparagraph 10.2.1.3, add the word "and" to the end of the subparagraph.
- 10.2.1.4 Add the following new subparagraph:
- .4 any other property of the Owner, whether or not forming part of the Work, located at the site or adjacent thereto in areas to which the Contractor has access.
- 10.2.5 Replace with the following:
- The Contractor shall promptly remedy damage and loss to property referred to in clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4. If the damage or loss is due in whole or in part to the Contractor's failure to take the precautions required by this Paragraph 10.2, the Contractor is entitled under property insurance required by the Contract Documents, to bear the cost.
- 10.2.8-
10.2.12 Add the following new paragraphs:
- 10.2.8 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.
- 10.2.9 The Contractor shall be responsible for all existing pipe lines, conduits, poles, wiring and other utilities that in any way interfere with the work, whether or not they are specifically shown on the drawings. He shall notify the proper authorities and see that all items to be maintained are protected, supported, or relocated as necessary to adjust them to the new work. Any damage to active utilities shall be corrected by the Contractor at no cost to the Owner.
- 10.2.10 The Contractor shall at all times protect excavations, trenches, buildings and materials from rain water, ground water, and from water of any other origin and shall remove promptly any accumulation of water. He shall provide and operate all pumps, piping and other equipment necessary to achieve this end. The Contractor shall also remove any snow or ice that might cause damage or delay.
- 10.2.11 During the progress of the work and at all times prior to the date of Substantial Completion or Occupancy of the Work by the Owner, whichever is earlier, the contractor shall provide temporary heat, ventilation, and enclosure, adequate to prevent damage to completed work or work in progress, or to materials stored on the premises. The permanent heating and ventilation systems may be used for these purposes only if and as specifically provided for in the Contract Documents.
- 10.2.12 The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property

of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such property of the Owner located in such areas and shall reimburse the Owner for any such loss, damage or injury except such as may be directly caused by agents or employees of the Owner.

10.3.2 Add the following subparagraph:

10.3.2 The Contractor shall furnish the Owner and the Architect, in writing, the names, addresses and telephone numbers of members of the Contractor's organization to be called in the event of an out-of-hours emergency at the project site.

ARTICLE 11 - INSURANCE AND BONDS

11.1 - CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Revise the first sentence to read:

The Contractor shall purchase from and maintain in an **A.M. Best "A-" or better rated** company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, **and to which the Owner has no reasonable objection**, such insurance as will protect the Contractor from claims, including as a minimum requirement those set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.4 Revise to read:

4. claims for damages insured by usual **bodily** injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

11.1.2 Add the following:

11.1.2.1 The Insurance required by subparagraph 11.1.1 shall be written for not less than the following limits and coverages, or greater limits where required by law.

.1 Workers' Compensation

- | | |
|--|-----------------------------------|
| (a) State: | Statutory Limits |
| (b) Employer's Liability | \$1,000,000 per accident |
| (c) United States
Longshoreman's Act and
Harbor worker's Act, if
applicable | \$1,000,000 Disease Each Employee |
| (d) Benefits stipulated by labor contracts where applicable | |

.2 Commercial General Liability (including Premises-Operations; Independent

Contractor's Protective, Products and Completed Operations, Broad Form Property Damage) written on an "occurrence form" basis:

- (a) Bodily Injury and Property Damage: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate (per project)
 - (b) Products and Completed Operations to be maintained for 3 years after final payment \$2,000,000 Aggregate
 - (c) Property Damage Liability Insurance shall provide coverage for X, C and U perils.
 - (d) Broad Form Property Damage Coverage shall include completed operations.
 - (e) Incidental Medical Malpractice
 - (f) Contractual Liability, (Hold Harmless Coverage):
Bodily Injury and Property Damage: \$1,000,000 Each Occurrence
\$1,000,000 Aggregate
 - (g) Personal Injury with employment exclusion deleted \$1,000,000 Aggregate
 - (h) Owner and Architect shall be included as Additional Insureds.
 - (i) Coverage shall include protection against damage claims due to use of explosives, collapse and underground coverage if the Work involves such exposures.
- .3 Business Auto Liability (Auto Symbol 1 including owned vehicles, non-owned and hired vehicles):
- (a) Bodily Injury and Property Damage \$1,000,000 Combined Single Limit
- .4 Umbrella Liability Insurance policy covering the excess over the limits specified for all employer's liability, commercial general liability and business auto liability insurance required hereunder with minimum limits of \$5,000,000 aggregate per policy year. Retention amount shall not exceed \$10,000.
- .5 Professional Liability \$500,000
This policy shall cover "Wrongful Acts," meaning negligent acts, errors or omissions by the Contractor, or any entity for whom the contractor is legally liable, arising out of the performance of, or failure to perform, professional services.
- .6 An "Owner's Protective" policy in the name of the Maine Turnpike Authority, with a \$5,000,000.00 limit, shall also be provided.
- .7 The Maine Turnpike Authority Contract Number shall be clearly stated on each policy.
- .8 All cancellation provisions of all liability policies shall have 30 day notice of

cancellation or non-renewal, and both the Owner and the Architect shall receive copies of such notice.

.10 Administrative & General Provisions:

- A. Additional Insured: Each policy, with the exception of Worker's Compensation and Professional Liability insurance, shall name the Owner, Maine Turnpike Authority, the Engineer, HNTB Corporation, and the Architect, SMRT, Inc. as an additional insured.
- B. Defense of Claims: Each insurance policy shall include a provision requiring the carrier to investigate, defend, indemnify and hold harmless all named insureds against any and all claims for death, bodily injury, or property damage, even in groundless.
- C. Primary Insurance: The insurance coverage provided by the Contractor shall be primary insurance with respect to the Owner, Maine Turnpike Authority, its officers, agents and employees. Any insurance or self-insurance maintained by the Owner for its officers, agents and employees is in excess of the Agent's insurance and shall not contribute with it.
- D. Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, agents and employees.
- E. Separate Application: The insurance provided by the Contractor shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.1.3 Change to read as follows:

The Contractor shall either (1) require each of his Subcontractors to procure and maintain during the life of his Subcontract, Subcontractor's Public Liability and Property Damage Insurance in the amounts specified in preceding Subparagraph 11.1.2.2 or (2) insure the activities of his Subcontractors in his policy specified in preceding Subparagraph 11.1.2.2 for the amounts stated therein.

Additionally, the Contractor shall procure All Risk Insurance covering all Contractor's equipment with a provision for Waiver of Subrogation against the Owner.

11.2 OWNER'S LIABILITY INSURANCE: Delete this paragraph and subparagraph 11.2.1 in their entirety.

11.3 - PROPERTY INSURANCE

11.3.1 Delete subparagraph 11.3.1 and substitute the following:

The Contractor shall maintain Builder's Risk Insurance (special coverage basis) on a completed value basis on the insurable portions of the project for the benefit of the Owner, the Owner's Construction Lender as their interests may appear, the Contractor and all subcontractors, as their interests may appear. This policy shall also contain an installation floater covering all construction materials not already made part of the building, including those stored off site.

11.3.1.1 This insurance shall be taken out and paid for by the General Contractor in the name of the Owner and the Owner's Construction Lender, as their

interests may appear, and coverage shall remain in effect until acceptance of the building by the Owner.

A copy is to be filed with the Owner, the Owner's Construction Lender as their interests may appear, and the Architect at the Start of the Work.

11.3.1.2 Special coverage shall include but not be limited to the following:

a.) All risks of physical loss, including theft, except the customary exclusions such as nuclear war, earthquake, intentional damage and flood. Loss by lightning, windstorm, cyclone, tornado, hurricane, hail, explosion, vandalism, riot, riot attending a strike, aircraft, smoke and vehicle damage, fire, malicious mischief extended coverage.

b.) Special form coverage to apply (A.K.A. "All Risk").

11.3.1.3 Deductibles for said property insurance shall not exceed \$1,000, and the Contractor shall pay costs not covered because of such deductibles.

11.3.2 Revise to read:

Boiler and Machinery Insurance. The **Contractor** shall purchase and maintain boiler and machinery insurance required by the Contract documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, **Owner's Construction Lender as their interests may appear**, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 Add the following to the end of the last sentence of subparagraph 11.3.3:

" to the extent covered and paid by insurance under this subparagraph 11.3.3."

11.3.4 Revise to read:

If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the cost of said coverage shall be itemized and charged to the Contractor by appropriate Deductive Change Order.

11.3.6 Revise to read:

Before an exposure to loss may occur, the **Contractor** shall file with the **Owner** a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the **Owner and the Architect**.

11.3.8 Delete in its entirety.

11.3.9 Delete in its entirety.

11.3.10 Delete in its entirety.

11.3.11 Delete in its entirety.

ARTICLE 12 - CORRECTION OF WORK

12.2.1 Add the following at the end of the subparagraph:

"and any cost, loss or damages to the Owner resulting from such failure or defect."

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.2.2 Add the following new subparagraph:

If the Owner conveys its interest in the Project to a third party, any rights which the Owner may have against the Contractor arising from this Agreement including without limitation Claims under Article 12 or Claims which, under the terms of subparagraph 4.3.5, are reserved to the Owner after the making and acceptance of final payment, shall automatically transfer to such third party.

13.5.4 Change subparagraph 13.5.4 to read as follows:

The Contractor shall obtain and deliver promptly to the Architect any occupancy permit and any certificates of final inspection of any part of the Contractor's work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect shall be a condition precedent to Substantial Completion of the Work.

13.5.5 Delete subparagraph 13.5.5.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

Change the name of article 14 to read "TERMINATION OF THE CONTRACT"

14.1.1.5 Delete subparagraph 14.1.1.5

14.2 Change Paragraph 14.2 to read as follows:

14.2 TERMINATION BY THE OWNER

If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the Architect, or otherwise is guilty of a substantial violation of any provision of the Contract, then the Contractor shall be in default, and the

Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, construction equipment and machinery and vehicles, offices and other facilities on the Project site, and all materials intended for the Work, wherever stored, and, seven (7) days after such notice, may terminate the employment of the Contractor, accept assignment of any or all subcontracts pursuant to Paragraph 5.4, and finish the Work by whatever method the Owner may deem expedient. The Owner shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner on account of the Contractor's default, including without limitation additional services and expenses of the Architect made necessary thereby. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages.

ARTICLE 15 - ADDITIONAL CONDITIONS

15.1 The Owner shall have the right to enter the premises for the purpose of doing work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the Owner not party to this Contracts.

15.2.1 The hourly wage rate paid to laborers of the General Contractor and all Subcontractors shall not be less than the prevailing hourly rate of wages for Work of similar character in the State of Maine. The fair minimum hourly rates determined by the State of Maine Department of Labor for this Contract, as expressed in Wage Determinations No. B2-071-2007 and H1-059-2007, are included as part of this Contract, and copies of which are included herein this project manual.

A copy of the Wage Determination(s) shall be provided by the Contractor to all Subcontractors on the project. In addition, the Wage Determination(s) must be kept posted at the work site by the Contractor and by all Subcontractors at a prominent location, easily accessible by the workers. The Contractor shall maintain documentation that each worker has received a copy of the Wage Determination.

The Contractor and all Subcontractors shall keep an accurate record noting:

- The name and occupation of each and all laborers, workmen and mechanics employed by them and all independent Contractors working under contract to them in connection to the project;
- Number of hours worked;
- Title of the job;
- Hourly rate or other method of remuneration for the job; and
- Actual wages or other compensation paid to each of the laborers, workmen, mechanics and independent Contractors.

A copy of this record must be kept at the jobsite and shall be available at all reasonable hours to the inspection of the Bureau of Labor and/or the Maine Turnpike Authority, its officers and agents. These records must be preserved for a minimum of three years after the completion of the contract.

A copy of each record must be filed with the Maine Turnpike Authority. this information shall be sent directly to the Maine Turnpike Authority, Director of Engineering and Building Maintenance, Attention: Wage Rate Records, 430 Riverside Street, Portland, ME 04103. The records shall note the Maine Turnpike Contract Number.

The Contractor and all Subcontractors are subject to penalties described in Title 26, Chapter 15 of the Maine Revised Statutes Annotated, for any violations of the Fair Minimum Wage Rates Policy for the State of Maine.

- 15.3 Affirmative Action Programs: The Maine Turnpike Authority is an equal opportunity employer and as such requires all Contractors to pursue in good faith affirmative action programs.

THEREFORE: The Contractor hereby agrees to the following requirements:

1. The Contractor will pursue an affirmative action program which includes procedures designed to increase the numbers of minorities, women, and handicapped at all levels and in all segments of the workforce where imbalances exist. Such a program should include an assessment of the existing situation, and the development of realistic goals for necessary actions. These goals and related procedures and timetables should not require rigid quotas, but are commitments which the Contractor should make every good faith effort to achieve.
2. In connection with Contracts in excess of \$250,000.00, the Contractor will insure contractually that all subcontractors shall also pursue an affirmative action program meeting the above requirements. The Contractor shall also ensure contractually that all subcontractors with Contracts in excess of \$50,000.00 pursue an affirmative action program meeting the above requirements.
3. An affirmative action program will provide that no Contractor and/or subcontractor will discriminate against an employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap unless based upon a bona fide occupational qualification. Such action shall include, but not necessarily be limited to the following: employment, upgrading, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay and compensation, and selection for training and apprenticeship.

Contractors are responsible under Maine State Law for ensuring and maintaining a work environment that is free from sexual harassment. The Contractor shall comply with all relevant provisions of Maine State Law in regard to sexual harassment including, but not necessarily limited to, 5 MRSA 4572,25 MRSA 806-807 and the regulations of the Maine Human Rights Commission.

- 15.3 Responsibility for Control and Cleanup of Hazardous Material Spills: The Contractor shall be responsible to control spills and properly cleanup, containerize, and dispose of petroleum and/or other hazardous material waste that results from the actions and/or equipment of the Contractor or his employees, Subcontractors and Suppliers.

The Contractor shall also be responsible for all direct and indirect costs associated with the control of spills and proper cleanup, containerization, and disposal of petroleum and/or other hazardous material waste that results from the actions and/or equipment of the Contractor or his employees, Subcontractors and suppliers.

- 15.4 Any fines or other costs assessed to the Maine Turnpike Authority as a result of the Contractor's non-compliance with permits issued by Authorities Having Jurisdiction as a result of the Contractor's non-compliance with regulatory requirements shall be paid by the Contractor. In the event the Contractor fails to make payment, the cost of the fine and any associated interest

and penalties, will be deducted from monies due, or which may become due to the Contractor under this Contract.

END OF SUPPLEMENTARY GENERAL CONDITIONS

FINAL LIEN AND CLAIM WAIVER AND AFFIDAVIT

Upon receipt of the sum of _____, which sum represents the total amount paid, including the current payment for work done and materials supplied for Project No. _____, in _____, Maine, under the undersigned's Contract with the Maine Turnpike Authority.

The undersigned, on oath, states that the Final Payment of _____ is the final payment for all work, labor, materials, services and miscellaneous (all of which are hereinafter referred to as "Work Items") supplied to the said Project through _____ and that no additional sum is claimed by the undersigned respecting said Project.

The undersigned, on oath, states that all persons and firms who supplied Work Items to the undersigned in connection with said Project have been fully paid by the undersigned for such Work Items or that such payment will be fully effected immediately upon receipt of this payment.

In consideration of the payment herewith made, the undersigned does fully and finally release and hold harmless the Maine Turnpike Authority, and its Surety, if any, from any and all claims, liens or right to claim or lien, arising out of this Project under any applicable bond, law or statute.

It is understood that this Affidavit is submitted to assure the Owner and others that all liens and claims relating to the Work Items furnished by the undersigned are paid.

(Contractor)

By: _____

Title: _____

State of MAINE
County of _____

I, _____, hereby certify on behalf of _____
(Company Officer) (Company Name)

its _____, being first duly sworn and stated that the foregoing representations are
(Title)

are true and correct upon his own knowledge and that the foregoing is his free act and deed in said capacity and the free act and deed of the above-named _____
(Company Name)

The above-named, _____, personally appeared before me this _____ day of _____ and swears that this is his free act and deed.

(SEAL)

Notary Public

My Commission Expires: _____

State of Maine
 Department of Labor
 Bureau of Labor Standards
 Technical Services Division
 Augusta, Maine 04333-0045
 Telephone (207) 624-6445

Wage Determination - In accordance with 26 MRSA §1301 et seq, this is a determination by the Bureau of Labor Standards, of the fair minimum wage rate to be paid laborers and workers employed on the below filled project

Title of Project ----- Maine Turnpike Authority Office Building – Contract 2007 07

Location of Project -- Portland, Maine in Cumberland County

**2007 Fair Minimum Wage Rates
 Building 2 Cumberland County
 (other than 1 or 2 family homes)**

<u>Occupation Title</u>	<u>Minimum Wage</u>	<u>Minimum Benefit</u>	<u>Total</u>	<u>Occupation Title</u>	<u>Minimum Wage</u>	<u>Minimum Benefit</u>	<u>Total</u>
Asbestos Abatement Wrkr	\$14.38	\$1.76	\$16.14	Ironworker - Reinforcing	\$18.00	\$10.00	\$28.00
Assembler - Metal Bldg	\$12.00	\$4.92	\$16.92	Ironworker - Structural	\$18.00	\$2.98	\$20.98
Backhoe Loader Operator	\$14.00	\$2.24	\$16.24	Laborers/Helper/Tender	\$12.61	\$1.00	\$13.61
Bollermaker	\$19.75	\$4.21	\$23.96	Laborer - Skilled	\$14.50	\$0.93	\$15.43
Boom Truck Operator	\$16.50	\$2.66	\$19.16	Loader Op - Front End	\$14.75	\$2.28	\$17.03
Bricklayer	\$21.85	\$1.94	\$23.79	Mechanic - Maintenance	\$19.34	\$2.76	\$22.10
Bulldozer Operator	\$16.00	\$2.87	\$18.87	Mechanic - Refrigeration	\$20.19	\$4.48	\$24.67
Cable Splicer	\$20.25	\$3.35	\$23.60	Millwright	\$21.00	\$11.15	\$32.15
Carpenter	\$18.00	\$2.60	\$20.60	Oil/Fuel Burner Serv & Instr	\$20.25	\$6.75	\$27.00
Carpenter - Acoustical	\$13.00	\$2.15	\$15.15	Painter	\$11.50	\$1.67	\$13.17
Carpenter - Rough	\$13.75	\$3.04	\$16.79	Paperhanger	\$13.00	\$0.00	\$13.00
Cement Mason/Finisher	\$15.00	\$0.74	\$15.74	Paver - Bituminous	\$14.88	\$1.27	\$16.15
Commun Equip Installer	\$20.88	\$3.57	\$24.45	Pile Driver Operator	\$19.00	\$5.55	\$24.55
Concrete Mixing Plant Op	\$14.55	\$3.70	\$18.25	Pipe/Stm/Sprkler Fitter	\$19.00	\$4.27	\$23.27
Concrete Pump Operator	\$18.50	\$2.38	\$20.88	Pipelayer	\$20.75	\$5.45	\$26.20
Crane Operator =>15 Tons	\$19.50	\$4.70	\$24.20	Plumber (Licensed)	\$21.00	\$4.49	\$25.49
Crusher Plant Operator	\$14.48	\$3.27	\$17.75	Plumber Hlpr/Trainee (Lic)	\$15.00	\$3.08	\$18.08
Diver	\$21.00	\$0.75	\$21.75	Roller Operator - Earth	\$12.43	\$4.49	\$16.92
Driller - Well	\$13.00	\$1.94	\$14.94	Roofer	\$14.63	\$1.45	\$16.08
Dry-Wall Applicator	\$22.00	\$0.00	\$22.00	Screed Operator	\$15.50	\$3.42	\$18.92
Dry-Wall Taper & Finisher	\$18.00	\$0.72	\$18.72	Sheet Metal Worker	\$16.43	\$3.44	\$19.87
Electrician	\$20.81	\$6.64	\$27.45	Sider	\$14.00	\$0.60	\$14.60
Electrician Hlpr (Licensed)	\$14.50	\$1.97	\$16.47	Stone Mason	\$16.24	\$2.04	\$18.28
Elevator Constrctr/Installer	\$40.32	\$14.77	\$55.09	Tile Setter	\$18.50	\$3.68	\$22.18
Excavator Operator	\$15.00	\$2.36	\$17.36	Truck Driver - Light	\$13.25	\$0.98	\$14.23
Fence Setter	\$12.50	\$1.08	\$13.58	Truck Driver - Medium	\$11.38	\$0.71	\$12.09
Floor Layer	\$15.00	\$1.35	\$16.35	Truck Driver - Heavy	\$12.75	\$2.10	\$14.85
Glazier	\$15.00	\$1.87	\$16.87	Truck Driver - Tractor Trailer	\$12.95	\$2.10	\$15.05
Insulation Installer	\$15.00	\$1.98	\$16.98				

The Laborer classifications include a wide range of work duties. Therefore, if any specific occupation to be employed on this project is not listed in this determination, call the Bureau of Labor Standards at the above number for further clarification.

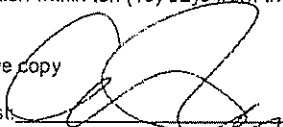
Welders are classified in the trade to which the welding is incidental.

Apprentices - The minimum wage rate for registered apprentices are those set forth in the standards and policies of the Maine State Apprenticeship and Training Council for approved apprenticeship programs

Posting of Schedule - Posting of this schedule is required in accordance with 26 MRSA §1301 et seq, by any contractor holding a State contract for construction valued at \$50,000 or more and any subcontractors to such a contractor

Appeal - Any person affected by the determination of these rates may appeal to the Commissioner of Labor by filing a written notice with the Commissioner stating the specific grounds of the objection within ten (10) days from the filing of these rates with the Secretary of State

Determination No: B2-071-2007
 Filing Date: June 25, 2007
 Expiration Date: 12-31-2007

A true copy
 Attest: 
 William A. Peabody
 Director
 Bureau of Labor Standards

State of Maine
 Department of Labor
 Bureau of Labor Standards
 Technical Services Division
 Augusta, Maine 04333-0045
 Telephone (207) 626-7906

Wage Determination - In accordance with 26 MRSA §1301 et seq. this is a determination by the Bureau of Labor Standards, of the fair minimum wage rate to be paid laborers and workers employed on the below titled project.

Title of Project ----- Maine Turnpike Authority Office Building Site Work – Contract 2007 07

Location of Project -- Portland, Maine in Cumberland County

**2007 Fair Minimum Wage Rates
 Highway & Earthwork Cumberland County**

Occupation Title	Minimum			Occupation Title	Minimum		
	Wage	Benefit	Total		Wage	Benefit	Total
Asphalt Raker	\$12.00	\$0.00	\$12.00	Ironworker - Reinforcing	\$18.00	\$10.00	\$28.00
Backhoe Loader Operator	\$14.00	\$1.93	\$15.93	Ironworker - Structural	\$14.75	\$0.52	\$15.27
Bricklayer	\$21.00	\$2.62	\$23.62	Laborers/Helper/Tender	\$11.50	\$0.70	\$12.20
Bulldozer Operator	\$16.00	\$2.86	\$18.86	Laborer - Skilled	\$13.00	\$0.81	\$13.81
Cable Splicer	\$18.50	\$3.56	\$22.06	Line Erector - Power	\$18.01	\$3.71	\$21.72
Carpenter	\$16.50	\$1.84	\$18.34	Loader Op, Front-End	\$14.95	\$2.17	\$17.12
Carpenter - Rough	\$15.00	\$2.11	\$17.11	Mechanic - Maintenance	\$15.95	\$2.37	\$18.32
Cement Mason/Finisher	\$12.00	\$0.59	\$12.59	Millwright	\$19.50	\$5.36	\$24.86
Commun Trans Erector	\$17.49	\$4.04	\$21.53	Painter	\$14.25	\$4.25	\$18.50
Concrete Mixing Plant Op	\$14.25	\$3.93	\$18.18	Paver, Bituminous	\$15.75	\$1.45	\$17.20
Concrete Pump Operator	\$15.40	\$7.96	\$23.36	Pipe/Steam/Sprinkler Fitter	\$20.00	\$4.45	\$24.45
Crane Op =>15 Tons	\$19.50	\$4.70	\$24.20	Pipelayer	\$15.50	\$1.42	\$16.92
Crusher Plant Operator	\$15.00	\$2.86	\$17.86	Roller Operator, Earth	\$12.35	\$4.41	\$16.76
Driller, Rock	\$14.75	\$2.10	\$16.85	Roller Op, Pavement	\$13.10	\$2.61	\$15.71
Electrician, Licensed	\$21.00	\$4.27	\$25.27	Screed Operator	\$15.30	\$3.41	\$18.71
Electrician Hlpr (Licensed)	\$14.00	\$1.89	\$15.89	Stone Mason	\$16.24	\$2.04	\$18.28
Excavator Operator	\$16.25	\$2.27	\$18.52	Truck Driver, Light	\$13.75	\$1.26	\$15.01
Fence Setter	\$12.75	\$1.05	\$13.80	Truck Driver, Medium	\$13.00	\$2.04	\$15.04
Flagger	\$11.00	\$0.87	\$11.87	Truck Driver, Heavy	\$12.95	\$0.99	\$13.94
Grader/Scraper Operator	\$16.63	\$2.37	\$19.00	Truck Driver, Tractor Trlr	\$14.13	\$2.05	\$16.18
Hgway Wrkr/Guardrail Inst	\$13.00	\$1.76	\$14.76	Truck Driver, Mixer Cemnt	\$10.30	\$1.15	\$11.45
Hot Top Plant Operator	\$19.00	\$6.98	\$25.98				

The Laborer classifications include a wide range of work duties. Therefore, if any specific occupation to be employed on this project is not listed in this determination, call the Bureau of Labor Standards at the above number for further clarification.

Welders are classified in the trade to which the welding is incidental.

Apprentices - The minimum wage rate for registered apprentices are those set forth in the standards and policies of the Maine State Apprenticeship and Training Council for approved apprenticeship programs.

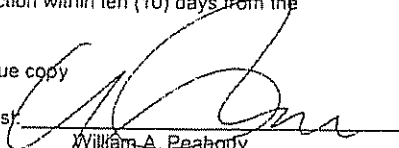
Posting of Schedule - Posting of this schedule is required in accordance with 26 MRSA §1301 et seq., by any contractor holding a State contract for construction valued at \$50,000 or more and any subcontractors to such a contractor.

Appeal - Any person affected by the determination of these rates may appeal to the Commissioner of Labor by filing a written notice with the Commissioner stating the specific grounds of the objection within ten (10) days from the filing of these rates with the Secretary of State.

Determination No: HI-055-2007
 Filing Date: June 25 2007
 Expiration Date: 12-31-2007

A true copy

Attest:


 William A. Peabody
 Director
 Bureau of Labor Standards

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE ARCHITECT'S PROJECT REPRESENTATIVE

AIA DOCUMENT B352

Recommended as an Exhibit When an Architect's Project Representative is Employed

1. GENERAL

1.1 The Architect and the Architect's Project Representative have authority to act on behalf of the Owner only to the extent provided in contractual agreements to which the Architect is a party. The Project Representative shall confer with the Architect at intervals and on occasions appropriate to the stage of construction. The Project Representative shall communicate with the Owner through, or as directed by, the Architect; and shall not communicate with Subcontractors unless authorized by the Contractor and the Architect.

2. DUTIES AND RESPONSIBILITIES

2.1 Observe the progress and quality of the Work as is reasonably necessary at that stage of construction to determine in general that it is proceeding in accordance with the Contract Documents. Notify the Architect immediately if, in the Project Representative's opinion, Work does not conform to the Contract Documents or requires special inspection or testing.

2.2 Monitor the construction schedule and report to the Architect conditions which may cause delay in completion.

2.3 Review Contract Documents with the Contractor's superintendent. Obtain necessary interpretations from the Architect and transmit them to the Contractor.

2.4 Consider the Contractor's suggestions and recommendations, evaluate them and submit them, with recommendations, to the Architect for a final decision.

2.5 Attend meetings as directed by the Architect and report to the Architect on the proceedings.

2.6 Observe tests required by the Contract Documents. Record and report to the Architect on test procedures and, where applicable, the results. Verify testing invoices to be paid by the Owner.

2.7 Maintain records at the construction site in an orderly manner. Include correspondence, Contract Documents, Change Orders, Construction Change Authorizations, Architect's Supplemental Instructions, reports of site conferences, Shop Drawings, Product Data, Samples, supplementary drawings, color schedules, requests for payment, and names and addresses of contractors, subcontractors and principal material suppliers.

2.8 Keep a diary or log book recording the Project Representative's time and activities related to the Project, weather conditions, nature and location of Work being performed, verbal instructions and interpretations given to the Contractor, and specific observations. Record any occurrence or Work that might result in a claim for a change in Contract Sum or Contract Time. Maintain a list of visitors, their titles, and time and purpose of their visit.

2.9 Assist the Architect in reviewing Shop Drawings, Product Data and Samples. Notify the Architect if any portion of the Work requiring Shop Drawings, Product

Data or Samples is commenced before such submittals have been approved by the Architect. Receive and log Samples which are required to be furnished at the site, notify the Architect when they are ready for examination, and record the Architect's approval or other action. Maintain custody of approved Samples.

2.10 Observe the Contractor's Record Drawings at intervals appropriate to the stage of construction and notify the Architect of any apparent failure by the Contractor to maintain up-to-date records.

2.11 Review Applications for Payment submitted by the Contractor and forward them to the Architect with recommendations for disposition.

2.12 Review the list of items to be completed or corrected which is submitted by the Contractor with a request for issuance of a Certificate of Substantial Completion. Inspect the Work and if the list is accurate, forward it to the Architect for final disposition; if not, so advise the Architect, and return the list to the Contractor for correction.

2.13 Review and report to the Architect on conditions of the portions of the Project being occupied or utilized by the Owner or separate contractors, to minimize the possibility of claims for damages.

2.14 Assist the Architect in final inspection of the Work. Receive from the Contractor and prepare for transmittal to the Owner the documentation the Contractor is required to furnish at the completion of the Work.

3. LIMITATIONS OF AUTHORITY

The Project Representative shall NOT:

3.1 Authorize deviations from the Contract Documents.

3.2 Approve substitute materials or equipment except as authorized in writing by the Architect.

3.3 Personally conduct or participate in tests or third party inspections except as authorized in writing by the Architect.

3.4 Assume any of the responsibilities of the Contractor's superintendent or of Subcontractors.

3.5 Expedite the Work for the Contractor.

3.6 Advise on, or issue directions concerning, aspects of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.

3.7 Authorize or suggest that the Owner occupy the Project in whole or part.

3.8 Issue a Certificate for Payment or Certificate of Substantial Completion.

3.9 Prepare or certify to the preparation of Record Drawings.

3.10 Reject Work or require special inspection or testing except as authorized in writing by the Architect.

3.11 Order the Contractor to stop the Work or any portion thereof.