

RFP #02-15/16 Request for Proposal for City of Sumter Public Services Complex and Associated New Facilities Construction Manager at Risk (CM-R)

The City of Sumter, South Carolina is requesting qualified firms to submit technical and cost proposals and to participate in a formal interview (if requested by the City), all as described herein, to further define the firm's qualifications to serve as a Construction Manager-At Risk (CM-R) for the City of Sumter Public Services Complex and Associated New Facilities. The successful firm will be asked to provide preconstruction and construction management services in accordance with the terms, conditions, and requirements set forth in the Request for Proposal documents.

Proposals will be received electronically only on or before Thursday, May 26, 2016 at 3:00PM EST. Deadline for submission of written questions will be until Thursday May 12, 2016 before 4:00PM EST. For questions on RFP contact the City of Sumter, Purchasing Department - Attention: Alice C. Bailey, C.P.M., CPPO, P O Box 1449, Sumter, SC 29151, or abailey@sumter-sc.com.

For Complete RFP documents visit: www.sumtersc.gov/purchasing.aspx .



CITY OF SUMTER, SOUTH CAROLINA

Request for Proposal

City of Sumter Public Services Complex and
Associated New Facilities CM @ Risk

RFP #02-15/16

April 28, 2016

Response Deadline: Thursday, May 26, 2016 at 3:00PM EST

City of Sumter
21 N. Main Street, 4th Floor
Sumter, SC 29150

Deadline to Request Additional Information and Ask Questions:
Thursday, May 12, 2016 at 4:00PM EST

Questions Should Be Directed to:
Alice C. Bailey, Purchasing Director
By E-mail Only to abailey@sumter-sc.com

REQUEST FOR PROPOSAL

PROJECT OVERVIEW

PROPOSALS WILL BE RECEIVED BY TH CITY OF SUMTER, SOUTH CAROLINA, for the above titled project. This solicitation is a Request for Proposals (RFP).

SUBMISSION DEADLINE Proposals must be received no later than 3:00PM EST on Thursday, May 26, 2016 via electronic submission.

SUBMISSION. Proposals must be submitted electronically as discussed further below in Section 3.2 below. The City will not accept hard copies of proposals.

CONTRACT. The City anticipates entering into a contract with one firm who submits the proposal judged to be most advantageous to the City. The selected firm shall be required to sign a formal contract documents included in this RFP document (the "Contract"). The proposer understands that this RFP does not constitute an agreement or a contract with the proposer. A proposal is not binding until proposals are reviewed and accepted by the City Council of the City and the Contract is executed by both parties.

DEVELOPMENT COSTS. The City shall not be liable for any expense incurred in connection with preparation of a response to this RFP. Proposers should prepare a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

RESERVED RIGHTS The City reserves the right to accept or reject any and/or all proposals, to waive irregularities and technicalities, and to request resubmission. The City shall be the sole judge of whether any proposal and/or the resulting Agreement is in its best interest, and its decision shall be final. The City reserves the right to accept or reject all or any part of a submission, if it is deemed in the best interest of the City. The City, in its sole discretion, may expand the scope of work to include additional requirements. The City reserves the right to investigate as it deems necessary to determine the ability of any proposer to perform the work or services requested. Each proposer, upon request, shall provide such information as the City deems necessary in order to make a determination.

GENERAL The City of Sumter, South Carolina ("City") is requesting qualified firms to submit technical and cost proposals and to participate in a formal interview (if requested by the City), all as described herein, to further define the firm's qualifications to serve as a Construction Manager-At Risk (CM-R) for the City of Sumter Public Services Complex and Associated New Facilities ("Project" or "project"). The successful firm will be asked to provide preconstruction and construction management services in accordance with the terms, conditions, and requirements set forth in this Request for Proposal.

Design and construction for this project must comply with all Federal, State and Local laws, statutes, ordinances, and the rules and regulations of all authorities having jurisdiction over the project and shall apply to the contract and the project throughout, and they will be deemed to be included in the contract the same as though herein written out in full. The City, with the assistance of Stewart-Cooper-Newell Architects, P.A. ("Designer"), is currently beginning development of construction documents to define the project scope, budget and schedule for the project. The successful respondent is expected to be a major contributor to the final development, verification and approval of the scope, cost and schedule during preconstruction services, including phasing (if any) and sequence of construction of the two envisioned facilities. Authorization to proceed with services beyond the preconstruction services is contingent upon the decision of the City to move forward with the Project and approval by the City of a Guaranteed Maximum Price (GMP) for the construction of the Project.

The successful proposer will provide preconstruction services including, but not limited to: schedule and constructability reviews; verify the Design Team estimate; value engineering (VE); identification of alternatives in project delivery phasing and early procurement options; contingent selection of certain trade subcontractors pursuant to a request for proposal ("RFP") procurement method; preliminary pricing of general conditions site services and the general and trade contracts; and preliminary construction scheduling. These activities will support the development and submission of a GMP as the construction

REQUEST FOR PROPOSAL

documents prepared by the design team reach a point for pricing near the end of the design phase.

Provided that the City decides in its discretion to continue with the construction of all or part of the Project, and contingent further upon the City and CM-R agreeing upon a GMP, the CM-R will provide construction services for the Project, managing and delivering all aspects of the construction of the Project, including holding all or a majority of subcontracts and supplier contracts, developing an overall project master schedule (which will also become a contractual obligation), management and coordination of all construction permit approvals, trade contracts and subcontracts, shop drawings, change orders and punch lists, and delivery of record drawings, OEM manuals and warranties. The City and the Designer will routinely inspect construction to protect the City's interests and to validate pay applications. The project will be subject to all third party inspections as required. In selecting a firm, the City will place great emphasis on the experience of the firm and assigned personnel in providing similar services on projects of similar magnitude and complexity as the proposed project. Selection preference will be toward firms that demonstrate substantial depths of knowledge and resources in the successful application of the principles of CM-R and general contracting, scheduling, contract coordination and compliance and budget control on projects of similar scope and complexity, and who are familiar with State, County, and City laws, ordinances, and codes. Small and minority business enterprises as certified by the Small and Minority Business Assistance Office (SMBAO) are encouraged to respond to this request.

Final decision and selection of CM-R rests solely with the City. The City makes no guarantee that any award will be made as a result of the solicitation, and reserves the right to accept or reject any or all submittals; waive any informalities, irregularities or minor technical inconsistencies; or delete any item or requirement from this solicitation or any resultant contract when deemed to be in the City's best interest. Any and all representations made within the Technical or Cost Proposal or during the Interview shall be binding on the Proposer.

Please note that the Owner considers response to this Request for Proposal by competing firms as purely voluntary and is under no financial obligation to said firms regarding the contents of their proposal.

PROJECT SCOPE

The project consists of the construction of a new Public Services Complex consisting of a new Police Headquarters building and a new Fire Department Headquarters building located in Sumter, South Carolina. The Police Department building will be approximately 36,000 square feet and the Fire Department building will be approximately 23,000 square feet. The Total Cost of Construction for both facilities is approximately Twelve Million (\$12,000,000) to Twelve Million Five Hundred Thousand (\$12,500,000).

The project will be designed and constructed to a level of quality and timeliness that reflects the long-term use of a City-owned facility. The architectural integrity of the campus core must be preserved and enhanced. Current Milestone Dates: The City's current timeline for the project anticipates that Construction Document Phase will be complete by early September, 2016. The City anticipates approval to proceed in late September/early October 2016 and a construction start November/December 2016. The City desires to fully occupy the new buildings during the early spring of 2018. The CM-R, working with the City and the Designer, will be responsible for developing the detailed Project Master Schedule and coordinating all activities to accomplish completion of the Project to include all required activities from the date of CM-R Contract Award to Final Completion and coordinating both Contractor and City activities during the Preconstruction, Mobilization and Construction Phases to accomplish the completion of the project in accordance with the Baseline Master Schedule.

REQUEST FOR PROPOSAL

PROJECT PROCUREMENT

GENERAL

The selection of the CM-R will comply with the guidelines of the City of Sumter Code of Ordinances, Ordinance No. 2319 including all subsequent Amendments, An Ordinance Establishing Procurement Procedures for the City of Sumter, South Carolina. Proposals will be evaluated by the City's Selection Committee based on the evaluation matrix set forth herein. The selected firm shall be the firm that scores the highest, offering a technically superior combination of demonstrated performance, relevant experience, technical and professional qualifications, and fair and reasonable pre-construction and construction fees.

POINT OF CONTACT

The City designates the following person as its Procurement Officer for this solicitation. Respondents shall restrict all contact with the City and direct all questions, including questions regarding terms and conditions, to this person.

Ms. Alice C. Bailey, C.P.M., CPPO
Purchasing Director
P O Box 1449
Sumter, SC 29151
Phone: 803-436-2587
Fax: 803-436-2615
Email: abailey@sumter-sc.com

SCHEDULE

It is understood that while the dates for successful completion of individual elements of the selection and award process may be adjusted to reflect actual progress, the following dates represent dates that the City believes are both reasonable and achievable with the full cooperation and support of all parties. Proposers are encouraged to evaluate their willingness to commit to full and unhindered support of this schedule before electing to participate in this competition.

- 04/28/2016 Request for Proposal published
- 05/12/2016 Deadline for submission of written questions until 4:00PM EST
- 05/26/2016 Deadline for submission of Proposals at 3:00PM EST
Electronic Submissions Only **See Section 3.2 below**
- 06/10,13 Evaluations, interviews and final ranking of firms
- 06/16/2016 Negotiations conclude (Contract Documents included in RFP Document)
- 06/21/2016 Contract for CM-R services awarded

PROPOSALS

In order for a proposal to be reviewed, it must satisfy the **Prerequisite Criteria** set forth in Section 4.2 of this RFP. Once the initial review of the Proposals is complete, two to five of the highest ranked firms will be asked to make an oral presentation to the Selection Committee, at a place and time specified by the City, which will further define the firm's qualifications to undertake and complete the Project successfully. The purpose of the interview will be to meet the proposed Project Team, to become familiar with key personnel, and to gain a full understanding of the proposer's project approach and ability to meet the stated objectives for the Project. Firms should be prepared to discuss with specificity the firm's capacity to conduct this work in compliance with the City's timetable, scope and budgetary goals. Firms should focus their presentations on the detailed plan for managing the cost, schedule, and quality on the project and any unique

REQUEST FOR PROPOSAL

characteristics or services the firm offers and their value to the City for this specific project. The Selection Committee may choose to ask individual firms to address specific areas or questions that arise during the review of the Proposals. All members of the Selection Committee will be present during the formal interview. Firms shall address any questions, prior to the interview, to the City's Point of Contact. Firms shall not contact any members of the Selection Committee. Scoring for oral presentations, 25 Points for Interview Criteria, will be on a separate scale (in addition to the 100 point proposal review scale).

At the conclusion of the interviews the interviewed firms will be ranked again. Based on that review the City will announce a contingent award and enter into negotiations with the highest ranked firm,

In the event a satisfactory agreement cannot be reached with the highest ranking firm, the City will enter into negotiations in turn with the second ranked firm or the third ranked firm until a mutually agreed-upon agreement is reached with one of the finalists, or the solicitation is terminated.

CLARIFICATION OF THE PROPOSALS

The Committee will review the proposals to determine whether there are aspects of a proposal that are unclear or contain errors, omissions or misunderstandings to the extent that the Committee is in doubt as to the precise meaning of the proposer. In that event the Committee will seek written clarification from the proposer. The purpose of clarification is not to remediate, but to understand. During the clarification process the Committee will not engage in negotiations related to price or potential improvements in the proposals as originally presented.

DISCUSSIONS

The City reserves the right to conduct discussions if they are deemed necessary with any firm deemed acceptable or potentially acceptable, and that have a reasonable chance of being awarded the contract. The Procurement Officer will manage any discussions on behalf of the City.

CITY / CM-R AGREEMENT

The CM-R shall generally provide the complete scope of services outlined in the AIA A133—2009 and AIA A201—2007, AIA A201-SMTR City of Sumter Standard Modifications to the AIA A201-2007, AIA A133-SMTR City of Sumter Standard Modifications to the AIA A133-2009 and modifications as determined by the City. The level of effort and the detailed scope will be defined during contract negotiations.

The final contract will be Actual Cost plus a Fixed Fee or a Fixed % of actual cost not to exceed the Guaranteed Maximum Price (GMP). Should the project execution plan require the project to proceed in several steps it is expected that the CM-R's services will be executed seamlessly based on appropriately executed amendments to the contract.

The Project will be Open Book as described more completely in the Contract Documents. All savings, including unused contingencies, will be returned to the City, unless otherwise provided in the final Agreement between the City and the CM-R.

REQUEST FOR PROPOSAL

RFP CRITERIA	
MAJOR CATEGORY	CRITERIA ELEMENTS
I. PERSONNEL EXPERIENCE	25 POINTS
Depth of Resources and Personnel with Relevant Experience [see Note 1]	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Depth of resources with experience and ability, qualified and available for the Project Superintendent's role. • Depth of resources with experience and ability, qualified and available for the Project Manager's role. • Depth of resources with experience and ability, qualified and available for the Project Executive's role.
Qualifications and Experience of the Proposed Project Team	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Experience of the project manager and superintendent working together on past projects. • Quality of references as to the proposed project director's commitment and project leadership. • Quality of references for the proposed team. • Past experience of the team working together with the selected Designer and/or Program Manager (if any). • Availability of the proposed team for this project. • Assigned team's experience with projects of similar facility size and type. • Assigned team's experience with effective budget control. • Assigned team's experience with effective schedule control.
II. FIRM EXPERIENCE	20 POINTS
Firm's General CM-R Project Experience [see Note 2]	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Experience with preconstruction and construction services. • Experience on State, County, City and other public projects. • Claims record.
Firm's Specific CM-R Project Experience and Statement of Why Firm Should be Selected for Project [see Note 3]	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Experience with projects similar to this Project. • Unique ability to provide CM-R services for this project.
	20 POINTS
III. COST PROPOSAL	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Preconstruction and Construction fee schedules • Flat Fees are Preferred
	10 POINTS
IV. SERVICES	As demonstrated by the proposer's: <ul style="list-style-type: none"> • Quality of firm's proposed services and how well services address proposed project needs. • Demonstrated ability to apply in-house services to solving

REQUEST FOR PROPOSAL

	project issues.
	10 POINTS
V. FINANCIAL INFORMATION	As demonstrated by the proposer's: <ul style="list-style-type: none"> Financial stability based on its ratio of current assets to current liabilities ("Current Ratio") and other evidences given.
	10 POINTS
VI. MANAGEMENT PLAN [see Note 4]	As demonstrated by the proposer's: <ul style="list-style-type: none"> Firm's demonstrated ability to solve complex project issues. Effectiveness of firm's cost management plan during design and construction. Firm's approach for managing changes within the stated cost and schedule limitations. Firm's approach for competitively administering and evaluating bid packages. Effectiveness of firm's schedule management plan during design and construction. Effectiveness of firm's subcontractor management plan. Effectiveness of quality assurance program and plan. Effectiveness of close-out plan. Effectiveness of plan for administering other services identified by firm, value to project. Effectiveness of the site logistics plan and safety plan.
	5 POINTS
VII. LOCATION OF FIRM'S PROPOSED OFFICE FROM WHICH THIS PROJECT WORK WILL BE WORKED ON TO THE PROJECT SITE	As demonstrated by the proposer's: <ul style="list-style-type: none"> Ability of project team to respond to project needs during preconstruction and construction.

Note 1: In assessing the Depth of Resources, the Committee will consider the extent to which:

- Each team member has had prior experience with CM-R delivery.
- The principal partners have previously worked together on a successful CM-R project of similar scope, cost and schedule requirements.
- Each partner has had prior experience with renovation and expansion construction projects for public agencies of the State of South Carolina.
- The positive reputation of each firm is attributable to the personnel on the proposed CM-R team.
- Personnel resumes are commensurate with the experience of the firm.
- Proposed project team has remained intact throughout the course of the construction.

Note 2: In assessing the General Project Experience, the Committee will consider the extent to which, **for the Proposer's recent CM-R projects having reached substantial completion:**

The clients look favorably upon future work with this firm.

A history of excellence in performance as shown by:

REQUEST FOR PROPOSAL

- Contributions to the final design are positive, value-centered and contribute to the overall success of the project.
- Construction has satisfied owner program requirements.
- Solutions to construction issues have been creative.
- Construction has been within the initial GMP budget (allowing for owner-requested changes).
- Construction quality has proven to be cost-effective on a life-cycle basis.
- Minimal errors and omissions.
- Reliable cost estimating.
- Constructor has maintained a clean, safe construction site.
- Projects have been completed on schedule.
- Projects have been completed with few change orders (excluding owner-originated changes).
- Constructor has offered opportunities for true value engineering savings that reflect both initial and long-term effectiveness only after joint determination with Owner that initial program elements could not be preserved.
- Constructor has effectively managed subcontractors.
- Constructor has proactively handled punch lists.

A history of integrity and true partnership is shown by:

- Constructor has complied with building codes, regulations, and contract terms and conditions.
- Constructor has built to the final design specifications.
- When required, change orders have reflected reasonable pricing.
- Constructor has promptly honored warranty repair and replacement.

Note 3: In assessing the Specific Project Experience/Summary Selection Statement, the Committee will consider the extent to which, for the Proposer's **most recent projects having reached substantial completion that demonstrate an understanding of and experience in meeting the specific challenges of the City of Sumter Public Services Complex and Associated New Facilities project:**

The clients look favorably upon future work with this firm.

A history of excellence in performance as shown by:

- Contributions to the final design are positive, value-centered and contribute to the overall success of the project.
- Construction has satisfied owner program requirements.
- Solutions to construction issues have been creative.
- Construction has been within the initial GMP budget (allowing for owner-requested changes).
- Construction quality has proven to be cost-effective on a life-cycle basis.
- Minimal errors and omissions.
- Reliable cost estimating.
- Constructor has maintained a clean, safe construction site.
- Projects have been completed on schedule.
- Projects have been completed with few change orders (excluding owner-originated changes).
- Constructor has offered opportunities for true value engineering savings that reflect both initial and long-term effectiveness.
- Constructor has effectively managed subcontractors.

REQUEST FOR PROPOSAL

- Constructor has proactively handled punch lists.

Note 4: In assessing the Management Plan, the Committee will consider to which the proposer’s Management Plan shows:

- Well-defined lines of authority, responsibility and communication.
- An appropriate understanding of the project’s technical, budget and schedule requirements and the problems that may be encountered during execution.
- A well-defined process for recognizing, evaluating and minimizing elements of risk so as to ensure success.

For those responses that are responsive and demonstrated responsibility on the part of the proposer, the Selection Committee will evaluate the submittals based upon the criteria described above. The City has established the relative importance of each element and sub-element of the criteria and has listed them in descending order of importance, as follows:

Criterion	1	2	3	4	5	6	7	Total
Points	25	20	20	10	10	10	5	100
Score								
Earned								

SUBMITTAL CONDITIONS, REQUIREMENTS AND INSTRUCTIONS

1. Conditions

- 1.1. The City makes no guarantee that an award will be made as a result of the solicitation, and reserves the right to accept or reject any or all submittals; waive any informalities, irregularities or minor technical inconsistencies; or delete any item or requirement from this RFP or any resultant contract when deemed to be in the City’s best interest. Any and all representations made in response to this solicitation shall be binding on the Respondent.
- 1.2. The City reserves the right to reject any or all responses received. The City is not obligated to request clarifications or additional information but may do so at its discretion. The City reserves the right to extend the deadline for submittals.
- 1.3. All submissions shall become the property of the City without compensation to Respondent for disposition or usage by the City at its discretion. Subject to the provisions of the Open Records Act, the details of the proposal documents will remain confidential until final award.
- 1.4. The City assumes no responsibility or obligation to the Respondents and will make no payment for any costs associated with the preparation or submission of responses to this solicitation.
- 1.5. During the performance of any contract resulting from this solicitation, the CM-R agrees as follows: The CM-R will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, place of birth, or physical handicap. CM-R must have a history of being non-discriminating on the basis of race, creed, color, sex, or national origin in any of its employment practices, or procurement practices with respect to the work force of the firm, or procurement services in connection with this project. An affirmative action plan must be maintained for both work force and procurement practices.
- 1.6. Failure to fully comply with all requirements contained in this solicitation may result in rejection of the submission and disqualification from further consideration.

REQUEST FOR PROPOSAL

2. General Instructions

- 2.1. **It is the City's intent to limit the cost of responding to this solicitation, so you are encouraged to be organized and succinct in your submissions. Page limits are identified below. Thick volumes of background and general marketing material are not desired and will not be evaluated. Respondents shall carefully read the information contained in this solicitation and submit a focused and complete response to all requirements and questions as directed. Incomplete responses will be considered non-responsive and subject to rejection. Submissions should be thoughtful, tightly focused and clearly document your firm's suitability for this Project, your responsiveness to the evaluation criteria, your understanding of the Project requirements and your proven ability to contribute to achieving the goals of the City.**
- 2.2. Please indicate, by firm, those certified by the Governor's Office of Small and Minority Business Assistance.
- 2.3. Only individual firms or formal joint ventures may apply. Two or more firms may not apply as a team unless they have formed a formal joint venture. Any associations will be disqualified. This does not preclude a Respondent from having sub consultants.
 - 2.3.1. "Prime-Sub" teams are bound by the requirements and limitations of this solicitation. Each firm must describe its experience and qualifications within the overall page limit.
 - 2.3.2. **For joint venture entities that have not completed at least two relevant projects as a joint venture, each firm should submit its qualifications separately within the overall page limit.**
- 2.4. The evaluation of all submissions will be based upon consideration of the demonstrated qualifications and capabilities of the Respondents such that any award will be in the best interest of the City. Submission of a Proposal indicates the Respondent's acceptance of the evaluation techniques and a recognition that subjective judgments must be made by the City during the evaluation process.
- 2.5. Except for the submission of clarification questions as discussed herein, Respondents shall not contact any members or employees of the City or the Designers regarding any aspect of this procurement until after the award of the contract. Contact with the organizations mentioned above shall be grounds for elimination.
- 2.6. Questions relating to the solicitation may be asked at any time up to the deadline set forth herein. All questions must be submitted in writing (by email is acceptable) to the designated Contact Person. Answers to all questions will be communicated in writing to all firms without identifying the firm which submitted the question.
- 2.7. It is the responsibility of each Respondent to examine the entire solicitation; to seek clarification in writing; and to review its submittal for accuracy before submitting the document. Once the submission deadline has passed, all submissions will be final. The City may, in its sole discretion, request clarification from any individual Respondent relative to their submission, and reserves the right to ask for additional information from all parties that have submitted responses.
- 2.8. Any clarifications or interpretations of this solicitation that materially affect or change its requirements will be addressed by formal addendum. It is the responsibility of all respondents to obtain this information in a timely manner. All such addenda issued by the City before the proposals are due are part of the solicitation, and respondents shall acknowledge receipt of such addenda and incorporate each addendum in its response.
 - 2.8.1. Respondents shall consider as binding only those clarifications and interpretations that the City issues by addenda. Interpretations or clarifications in any other form, including oral statements, will not be binding on the City and should not be relied on in preparing responses.
- 2.9. The evaluation of the Proposals shall be based on the requirements described in this solicitation. All properly submitted, responsive Proposals submitted by responsible proposers will be reviewed and evaluated by the City. The three to five highest ranked respondents will be asked to participate in a formal interview.
- 2.10.
- 2.11. The City reserves the right to divide the Project into multiple parts; to reject any and all

REQUEST FOR PROPOSAL

responses and re-solicit for new Proposals; or to reject any and all proposals and to temporarily or permanently abandon the Project. The City makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this solicitation for any project and no such representation is intended or should be construed by the issuance of this solicitation.

3. Specific Instructions

3.1. The City will receive Proposals at the time and location specified herein.

3.1.1. Date and Time as specified in writing by the City.

City of Sumter
Purchasing Department
Attention: Ms. Alice C. Bailey, C.P.M., CPPO
21 N. Main Street
Sumter, SC 29150

3.2. Electronic Submissions Only

3.2.1. Proposals shall be submitted electronically only. Proposers may upload proposals by visiting the following URL: <http://www.sumter-sc.gov/submit-rfp.aspx> - Only files in .pdf, .xls, or .doc formats will be accepted. Printing shall be enabled on files submitted. The RFP # and Name must be included on the web RFP form and all attached documents at time of submittal. In the event of technical difficulties in submitting proposals, proposers should contact the City's Purchasing Director, Alice Bailey, at 803.436.2587 or by email to abailey@sumter-sc.com.

3.2.2. Number each side of a printed page consecutively, including the Letter of Commitment, brochures, licenses, resumes, supplemental information

3.2.3. The front cover must clearly identify the Project Name, Project Number, and the Date of Submission and the Name of Proposer.

3.2.4. Separate and identify each criteria response by use of a divider sheet with an integral tab identified as follows:

- Letter of Commitment
- Prerequisite Criteria
- Personnel
- Firm Experience
- Cost Proposal
- Management Plan
- Services
- Financial Information
- Location

3.3. The City desires to contract with those firms whose recent experience clearly and succinctly demonstrates the superior abilities of the firm and its personnel to perform the work required by this project. When a criterion defines a specific number of items (e.g., number of projects) to be listed or described, then only that number of items shall be provided. The City reserves the right to consider any and all information available in evaluating the experience of the respondent as a firm and the project team as individuals. References will be checked at the City's discretion. It is the respondent's responsibility to ensure that it has listed current contacts with a correct phone numbers. Incorrect, difficult-to-reach or out-of-date reference contact information may result in the exclusion of that project from consideration of the respondent's qualifications to perform this Project.

4. Responses to Evaluation Criteria

4.1. Letter of Commitment

4.1.1. Basic company information

- Company name
- Address & Zip code
- Name of primary contact (authority for binding negotiations)
- Telephone number
- Fax number
- Email address

REQUEST FOR PROPOSAL

- South Carolina Construction-Manager License Numbers
 - South Carolina General Contractor's License Number
- 4.1.2. Provide a statement of disclosure, which will allow the City to evaluate possible conflicts of interest. This disclosure requirement is not about giving the City permission regarding our contacting your references, it is about revealing relationships that your company may have with persons not of your company who are directly involved in the decision-making regarding this project. If your company has no conflicts of interest, your statement should affirm that as fact, and you may do so succinctly. The signer of this statement of disclosure should anticipate the following pledge that will be required by the CM Contract: "The CM-R covenants that it currently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Contract. The CM-R further covenants that, in the performance of this Contract, it shall not employ or contract with any person whose employment or contracting would create a conflict of interest."
- 4.1.3. Provide the following certification and acknowledgement statement:
"The undersigned hereby affirms that regarding information furnished by the applicant herewith, and as may be provided subsequently (including information presented at interview, if a finalist):
- All information of a factual nature is certified to be true and accurate.
 - All statements of intent or proposed future action (including the assignment of personnel and the provision of services) are commitments that will be honored by the applicant if awarded the contract.
 - It is further acknowledged that:
 - If any information provided by the applicant is found to be, in the opinion of the Selection Committee, substantially unreliable, this application may be rejected.
 - The Selection Committee may reject all applicants and may stop the selection process at any time.
 - The award of any contract will be made on the City's evaluation of information provided herein, including the results of the reference checks."
- 4.1.4. Notarized signature of Corporate Executive or equivalent with authority to bind the firm to its submittal.
- 4.2. Prerequisite Criteria**
- 4.2.1. Provide documents, including statements from insurance and surety agents, attesting to your firm's compliance with the prerequisite criteria listed below.
- 4.2.1.1. Firm MUST have proper licenses at the time of submission to perform construction management services and general contracting in the state of South Carolina. Copies of licenses must be provided.
- 4.2.1.2. Firm MUST demonstrate that appropriate worker's compensation and liability insurance coverage for this project can be obtained from a firm or firms licensed in the State of South Carolina.
- 4.2.1.3. Firm MUST demonstrate that a Builder's Risk Insurance Policy and other insurance as required for this project can be obtained from a firm or firms licensed in the State of South Carolina.
- 4.2.1.4. Firm MUST demonstrate that a payment and performance bond for the total cost of the work can be obtained from a firm or firms licensed in the State of South Carolina. The bonding firms must have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the anticipated Total Construction Cost that does not include operations, maintenance, and finance.
- 4.2.1.5. Firm MUST demonstrate a sustained and superior commitment to workplace safety in all activities. Firm shall provide its OSHA incidence rates for recordable injuries and illnesses for the previous three years and shall relate those rates to current industry averages. Firm shall also provide its Experience Modification Rates for the previous five years. Rates which exceed industry averages by more than 10% may

REQUEST FOR PROPOSAL

be grounds for disqualification from further consideration.

- 4.2.1.6. Firm or any component firm of a joint venture **MUST NOT** appear on the Federal Government's or State's Excluded Parties List System or in any debarment list maintained by any State or entity of South Carolina. A **notarized** affidavit to this effect shall be provided.
- 4.3. Personnel
 - 4.3.1. Provide general information about the firm's personnel resources, including skill groups and numbers of employees for the proposed office location and the firm.
 - 4.3.2. Name all key personnel which will be part of the construction management team for this project and provide their current cities of residence. Describe in detail the experience and expertise of each team member. The key personnel, at a minimum, are the project superintendent, project manager, project director, estimator or preconstruction manager, and the executive in charge. (Note: Key personnel must be committed to this project for its duration unless excused by the City.)
 - 4.3.2.1. Identify the proposed team members (including consultants) who worked on the Projects listed in the Relevant Projects section of this solicitation, and describe their responsibilities.
 - 4.3.2.2. Provide a matrix of the proposed Team members and the projects listed in the Relevant Projects section, indicating the position(s) performed by the team members on those projects. Compare those responsibilities to those proposed for this project.
 - 4.3.2.3. If the team as a whole provided construction management services for any of the relevant projects listed, so indicate.
 - 4.3.3. Describe, in graphic and written form, the proposed Project assignments and lines of authority and communication for each team member to be directly involved in the Project.
 - 4.3.4. Indicate the estimated percent of time these team members will be involved in the Project for Preconstruction and Construction Services.
 - 4.3.5. Name any consultants which are included as part of the proposed team. Describe each consultant's proposed role in the project and its related experience. Identify on which of the relevant projects your firm has worked with the consultant.
- 4.4. Firm Experience
 - 4.4.1. General CM-R Project Experience
 - 4.4.1.1. List up to ten (10) projects with photos and floor plans for which your firm has provided or is providing construction management services which are most related to this project. In determining which projects are most related, consider the following: similar use, size and complexity; how many members of the proposed team (and their roles) worked on the listed project and how recently the project was completed. List the projects in priority order, with the most related project listed first.
 - 4.4.1.2. For each of the listed projects, provide the following information: construction cost (original GMP and final construction cost), current phase of development, completion date (estimated or past), type of construction services provided (CM at risk with GMP, CM-agency, design/build, general contractor-low bid, negotiated general contract, subcontractor to prime), owner's contact person and telephone number and the name and telephone number of the project architect. List any active or pending legal claims and explain. It is the respondent's responsibility to provide accurate and current contact information.
 - 4.4.1.3. Describe how your firm's approach to project management establishes clear lines of authority, responsibility and communication to achieve success.
 - 4.4.1.4. Describe conflicts or potential conflicts with the owner or with trade contractors and describe the methods used to prevent and/or resolve those conflicts.
 - 4.4.1.5. Describe the types of records, reports, monitoring systems and information management systems which your firm used in the management of those projects.
 - 4.4.1.6. Describe your cost control methods for the preconstruction and construction phases. How do you develop cost estimates and how often are they updated? Provide examples of how these techniques were used and what degree of accuracy was

REQUEST FOR PROPOSAL

achieved. Include examples of successful value engineering to maintain project budgets without sacrificing quality.

- 4.4.1.7. Describe the way your firm maintains quality control during the preconstruction and construction phases. Provide specific examples of how these techniques were used.
 - 4.4.1.8. Describe the way in which your firm develops and maintains project schedules. How often do you update schedules? Provide examples of how these techniques were used. Include specific examples of scheduling challenges, and how your firm helped solve them.
 - 4.4.1.9. Beyond the work examples submitted, describe how your firm can bring alternative construction methods proven to be cost-effective and appropriate for this project.
- 4.4.2. Specific CM-R Experience
- 4.4.2.1. Relevant Projects. Identify and describe the proposed Team's past project experience for providing Construction Manager at Risk Services that are MOST RELATED TO THE SCOPE OF THIS PROJECT completed within the last five (5) years. List up to five (5) projects in order of priority, with the most relevant project listed first. Projects listed shall be considered relevant based on the scope of the work relative to this project and the specific project participation and experience of the proposed project team.
 - 4.4.2.2. Information Required. Provide the following information for each project listed:
 - Project name, location, contract delivery method, and description
 - Color images (photographic or machine reproductions)
 - The Owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number
 - Architect/Engineer's name and representative who served as the day-to-day liaison during the construction phase of the project, including telephone number.
 - Length of business relationship with the Owner.
 - Original/GMP Construction Cost and Actual Final construction cost (including fee and overhead). Fees and Overhead should be listed separately.
 - Final project size in gross square feet
 - Type of construction (new, renovation, or expansion—if a mixture of types, provide a percentage of each type of construction)
 - Notice To Proceed date for Preconstruction Phase Services
 - Notice To Proceed, Initial and Final Substantial Completion, and Final Payment dates for Construction Phase Services
 - Name of Project Manager (individual responsible to the Owner for the overall success of the project) at the start of the project and at the end of the project.
 - Name of Project Superintendent (individual responsible for coordinating the day to day work) at the start of the project and at the end of the project.
 - Names of Mechanical, Plumbing and Electrical subcontractors
- 4.4.3. Statement of Why Firm Should Be Selected
- 4.4.3.1. Provide a summary statement, on two (2) pages or fewer, which differentiates your firm from others offering similar services and which uniquely establishes the firm's capacity and capability to perform this project.
- 4.5. Management Plan
- 4.5.1. Approach to CM at Risk. Describe your management philosophy for the Construction Manager at Risk project delivery method and how that philosophy will be implemented on this Project to achieve superior results.

REQUEST FOR PROPOSAL

- 4.5.1.1. Describe your understanding of the administrative challenges and opportunities associated with providing Preconstruction and Construction services for the City of South Carolina on this project, and your strategy for resolving these issues successfully.
- 4.5.1.2. Describe your understanding of the technical challenges and opportunities associated with providing Preconstruction and Construction services for the City of South Carolina on this project, and your strategy for resolving these issues successfully.
- 4.5.2. Communication. Understanding the planning schedule, procedural constraints and unique aspects of this project, describe your plan for communicating constructability, phasing, value engineering and other budget options in a form that will quickly facilitate the City's decision making.
- 4.5.3. Conflict Resolution. For any combination of three (3) projects listed in response to Section 4.4.2 of this solicitation, describe any conflicts with the Owner, Consultants, Architect/Engineer, or subcontractors and describe the methods used by the Respondent to resolve those conflicts.
- 4.5.4. Budget and Cost Control.
 - 4.5.4.1. Describe your fiduciary responsibility as a Construction Manager at Risk using Guaranteed Maximum Price contracts for publicly funded projects.
 - 4.5.4.2. Describe your cost estimating methods. From any three (3) relevant projects listed in response to Section 4.4.2 of this RFP, describe how the estimates were developed, how often they were updated and the degree of accuracy achieved from initial estimate to final billing.
 - 4.5.4.3. Describe your cost control methods during construction and how you procure subcontracts; confirm scope and value; and ensure proper payment. From any three (3) relevant projects listed in 4.4.2 of this RFP, provide descriptions of how these techniques were used and the degree of accuracy achieved.
 - 4.5.4.4. Describe your methodology for working with the Project Designer and their consultants to deliver a Guaranteed Maximum Price and to maintain the GMP throughout the design and construction process.
 - 4.5.4.5. Provide a sample of a cost estimate used to establish a GMP contract amount from one of the relevant projects listed in Section 4.4.2 of this solicitation.
 - 4.5.4.6. The City intends to accept a Guaranteed Maximum Price prior to the final completion of Construction Documents. Describe: (1) your process for ensuring that the Design Documents provide the information necessary to arrive at a complete GMP, including all Owner requirements with reasonable contingencies; and (2) your process for subsequently ensuring that the 100% Construction Documents align with the project scope defined in the previously accepted GMP proposal documents.
- 4.5.5. Schedule Management.
 - 4.5.5.1. The City has established a Project Baseline Schedule on the basis of the City's academic calendar. Describe your process for working with the City and the Designer to ensure that the preconstruction phase services provide the information necessary to arrive at an achievable detailed Baseline Schedule, including all Owner requirements with reasonable contingencies.
 - 4.5.5.2. Describe how you will develop, maintain and update the detailed project schedule during design and construction.
 - 4.5.5.3. Describe your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary. From any three (3) of the projects listed in response to Section 4.4.2 of this RFP, provide descriptions of how these techniques were used, including specific scheduling challenges or requirements and actual solutions.
 - 4.5.5.4. Describe how you develop and maintain work schedules during design and construction to coordinate with the City's project schedule. From any three (3) projects listed in response to Section 4.4.2 of this RFP, provide examples of how these

REQUEST FOR PROPOSAL

techniques were used.

4.5.5.5. Describe your experience with Critical Path Method (CPM) Scheduling. From any of the projects listed in response to Section 4.4.2 of this solicitation, provide a sample of the monthly schedule reports, including identified milestones and schedule recovery plans.

4.5.6. Use of Best Practices

4.5.6.1. Describe your quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project. Provide specific examples of how these techniques or procedures were used from any three (3) projects listed in response to Section 4.4.2 of this RFP.

4.5.6.2. Describe your procedures for implementing industry's "best practices" as defined by the Construction Industry Institute and similar organizations for:

- Establishing and tracking project objectives
- Using project scope definition resources in order to obtain complete and accurate design and construction documents from the A/E
- Partnering
- Cost tracking
- Change (order) management systems
- Total quality management for each phase, including close-out and commissioning

4.5.6.3. Effective Constructability Review and Value Engineering services during Preconstruction will be critical to the success of the Project. Provide specific examples of how these techniques or procedures were used to maintain project budgets without sacrificing quality from any three (3) projects listed in response to Section 4.4.2.

4.6. Services

4.6.1. Provide an overview of the services offered by your firm. Relate those services to the needs of this Project and specifically how those services will contribute to this project's success.

4.6.2. For any three (3) of the projects listed in Section 4.4.2 of this solicitation, describe the types of records, reports, monitoring systems and information management systems that your firm used in the management of those projects and how those systems and procedures will contribute to success on this Project.

4.6.3. For any three (3) of the projects listed in Section 4.4.2 of this solicitation, describe how you have maintained security during the construction phase of the work and how those policies and procedures will contribute to success on this Project.

4.6.4. Provide any other details regarding special services, products, advantages or other benefits offered to the City by your firm.

4.7. Financial Information

If the firm has multiple offices, the qualification statement should include financial information about the parent company and branch office separately. Parent company (or general office) financial information as totals will be acceptable IF "parent" (or "general office") means that it is financially responsible for the liabilities of the branch office. If the parent company is not so responsible, meaning that its financial resources are not available to the office that will perform the contract, it will be misleading to the City to offer the financials of any office other than the one with the prospect of a contract with the City.

4.7.1. List your total annual billings for each of the past five (5) calendar years.

4.7.2. Has the firm ever failed to complete any work awarded to it or been removed from any project awarded to the firm? If yes, provide an explanation and contact information for the owner's project manager.

4.7.3. List the contact persons, addresses, and phone numbers for your insurance carrier and agent.

4.7.4. List the contact persons, addresses, and phone numbers for the firm's bonding company and agent.

4.7.5. What percentage of your firm's work during the past five (5) years has been negotiated?

REQUEST FOR PROPOSAL

- 4.7.6. Supply firm's Current Ratio (Current Assets/Current Liabilities) experience for the last five (5) years, with a signed affidavit.
- 4.8. Location
 - 4.8.1. Provide the location of your proposed project office(s) for preconstruction and construction phase services. Describe how any proposed off-site resources will be integrated into the Management Plan to ensure project success.
- 4.9. Cost Proposal
 - 4.9.1. Provide a completed Fee Proposal form.
 - 4.9.2. Fees shall include:
 - 4.9.2.1. Preconstruction fees through Construction Documents to the point that a GMP can be developed.
 - 4.9.2.2. Percentage or flat fee for construction services.
 - 4.9.2.3. Percentage or flat fee for change orders.

REQUEST FOR PROPOSAL

ATTACHMENTS

THE FOLLOWING DOCUMENTS ARE INCLUDED IN THIS REQUEST FOR PROPOSAL

- Statement of Services Required
- Fee Proposal Form
- AIA A133—2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor
- AIA A201—2007, General Conditions of the Contract for Construction
- SMTR-A201/CM-R-2007, City of Sumter Standard Modifications to AIA A201-2007
- SMTR-A133-2009, City of Sumter Standard Modifications to AIA A133-2009



CITY OF SUMTER, SOUTH CAROLINA

Required Services

City of Sumter Public Services Complex and
Associated New Facilities CM @ Risk

RFP #02-15/16

April 28, 2016

REQUIRED SERVICES

OVERVIEW

Acting as a member of the Project Team in cooperation with the City of Sumter, South Carolina and the Designers (Stewart-Cooper-Newell Architects, P.A. and associated consultants), the Construction Manager at Risk (CM-R) will be tasked to provide a broad range of pre-construction, design support and contractual construction services as outlined in this document. Subject to negotiation or adjustment by change order, the following major elements of service are anticipated for the Project. This description is, of necessity, general and the successful proposer will be expected to engage in good faith negotiations regarding the details of these or any other services required to ensure project success.

The scope of construction management services may be generally divided into five phases as follows:

1. Stage 1 Preconstruction (Schematic Design). This stage has been completed. The Design Team has prepared schematic designs, a preliminary construction management plan (hereinafter this document, in all of its phases of development, shall be referred to as the Construction Management Plan), a master baseline schedule (hereinafter this document, in all of its phases of development, shall be referred to as the "Schedule"), and a preliminary project and construction (hereinafter this document, in all of its phases of development, shall be referred to as the "Construction Budget") (collectively these documents will be referred to as Project Planning Documents).
2. Stage 2 Preconstruction (Design Development and Construction Documents). This phase will include the CM-R working jointly with the rest of the Project Team for Design Completion and Cost Estimating to develop a preliminary Guaranteed Maximum Price (GMP) through value engineering and other methods.
3. Construction Buy-Out. In this phase, the CM-R will develop and execute Trade Contract Buy-Out services, with bonding, and present a final GMP to the City which, upon agreement, will become a party of the contract pursuant to a change order.
4. Construction. Under contract with the City, the CM-R is responsible for the coordination and construction of the entire project, including management and coordination of all construction permit approvals.
5. Post Construction. Upon completion of the project, the CM-R is responsible for management of the closeout process and ensuing warranty work.

It is anticipated that the CM-R will perform services in two or more of the foregoing project phases concurrently.

STAGE 1 PRECONSTRUCTION (Schematic Design) -- COMPLETED

STAGE 2 PRECONSTRUCTION (Design Development & Construction Documents)

Stage 2 will include the completion of Preconstruction Design Services, including Design Development and Construction Documents to approximately 90% and the establishment of a GMP. In this phase the Design Team and the CM-R will work in a highly collaborative manner. During this phase, early bid packages (such as site, demolition, foundation and/or structural) may be developed. Stage 2 preconstruction activities will proceed as described below.

1. Project Management
 - a. Project Conference

During the Design Phase, the CM-R shall conduct a project conference attended by the CM-R, the Designers, the City and others as necessary. The focus of the meeting shall be the

REQUIRED SERVICES

sharing of the Project vision and a full understanding of the Project, Owner expectations for the Project and challenges faced by the project team. During the Project Conference, the project team and the CM-R shall review the Project Planning Documents. Topics to be addressed include:

- Project goals and objectives, including an understanding of why this project is important to the City and how this project relates to other planned work on the site.
 - An overview of the building design as it exists at the time of the conference.
 - An overview of the impact of the construction on any existing structures to remain and any existing structures to be demolished.
 - An overview of trees to be protected throughout construction.
- Additional topics, specific to the CM-R's inclusion on the Project Team:
- Master plan, deliverables, structure and responsibilities, including reporting relationships and major responsibilities of all parties. Define who is responsible, who is to be kept informed and who provides support and/or consultation. Particular emphasis will be placed on the determination of primary responsibilities for the CM-R.
 - Critical success factors and project acceptance criteria, including how team members will be measured on their deliverables.
 - Risk and issues management, including how risks and issues will be identified, communicated to the team and addressed to appropriate levels in the project chain of command.
 - Communication Strategies for both internal and external communications, including documentation; how issues are to be communicated to appropriate levels in the project chain of command; and how confidential information will be identified and handled.
 - Change management, including the process for managing scope or budget changes. Identify the roles and responsibilities for initiating and authorizing changes and the processes required to support the approval of changes.

b. Revisions to the Construction Management Plan

During the Design Phase, the CM-R and the Design Team shall make recommendations to the City regarding revisions to the Construction Management Plan. Revisions approved by the City shall be incorporated into the Construction Management Plan.

c. Design Phase Information

The CM-R shall monitor the Project Team's compliance with the Construction Management Plan and shall coordinate and expedite the flow of information between the City, the Designers and others as necessary.

d. Progress Meetings

The CM-R shall conduct periodic progress meetings attended by the City, the Designers and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM-R shall prepare and distribute minutes of these meetings to the City, the Designers, and others as directed.

e. Review of Design Documents

The CM-R shall review the design documents for clarity, consistency, constructability and coordination among the Contractors. The results of the review shall be provided in writing by the CM-R as notations on the document files for the Project. The CM-R is not responsible for providing, nor does the CM-R control, the Project design and/or contents of the design documents. By performing the reviews described herein, the CM-R is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project

REQUIRED SERVICES

design and design documents. The CM-R's actions in reviewing the Project design and design documents and in making recommendations as provided herein are only advisory to the City.

It is understood by all parties that it is in the best interests of the Project for the CM-R to have adequate time to perform the required coordination and constructability checks, most especially the final coordination and constructability review. As a basis for planning, the CM-R shall allow four (4) weeks for the City's plan check review of the completed Construction Documents. Once the City review is complete, the CM-R shall have two (2) weeks for the final coordination and constructability review and to forward any comments to the Designers for resolution. At this point the CM-R is expected to warrant the completeness of the design documents.

f. Design Recommendations

The CM-R shall make recommendations to the City and Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work. In addition, the CM-R shall give to the Designers all data of which it or the City is aware concerning patents or copyrights for inclusion in Contract Documents.

g. City Design Reviews

The City will compile and convey their review comments to the Designers. The Designer's will copy the CM-R on review documentation. The CM-R shall expedite the City's design review after receipt from the Designers.

h. Approvals by Regulatory Agencies

The CM-R shall coordinate transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews.

i. Public Relations

The CM-R shall assist the City in public relations activities and shall prepare information for and attend public meetings regarding the Project.

j. Project Funding

The CM-R shall assist the City in preparing documents concerning the Construction Budget and for use in obtaining or reporting on project funding. The documents shall be prepared in a form approved by the City.

2. Time Management

a. Revisions to Schedule

As necessary throughout the Design Phase, the CM-R shall recommend schedule recovery adjustments and, if absolutely necessary, revisions to the Schedule. The City shall issue change orders as needed to the appropriate parties to implement any revisions to the Schedule.

b. Stage 2 Preconstruction (Design) Milestone Schedule

During this phase the CM-R shall prepare a more detailed Schedule for the Design Phase ("Design Phase Milestone Schedule"). The Design Phase Milestone Schedule shall be a method for judging progress during the Stage 2 of the Preconstruction Services (the "Design

REQUIRED SERVICES

Phase”).

c. Pre-Bid Construction Schedules

Prior to transmitting Contract Documents to bidders, the CM-R shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Construction Buy-Out Phase.

3. Cost Management

a. Construction Market Survey

The Construction Manager shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project. A report of the Construction Market Survey shall be provided to the City, the Designers and the City of Sumter. The results of the survey and input from the City will provide early input to the CM-R’s final Vendor Outreach Plan for stimulation of local vendor interest and M/WBE involvement.

b. Cost Control

Following the completion of each design phase milestone, the CM-R shall prepare an estimate of the construction cost for the Design Drawings and Specifications furnished by the Designers. Each estimate shall be accompanied by a report to the City and Designers identifying variances from the Baseline Project and Construction Budget as well as CM-R’s assumptions in preparing the estimate. The CM-R shall coordinate the activities of the City and Designers when changes to the design are required to remain within the Project and Construction Budget.

c. Construction Budget Revision

The CM-R shall make recommendations to the City concerning the design changes that may result in revisions to the Construction Budget, which will form the basis of a preliminary GMP, and divisions of the Work required for the Project. CM-R shall not advise or cause the reduction or elimination of construction necessary for fire and life safety or for compliance with applicable codes, standards, laws or regulations.

d. Value Engineering Studies

The CM-R shall provide value engineering recommendations to the City, the Construction Manager, and Designers for major construction components, including cost evaluations of alternative materials and systems. CM-R shall not advise or cause the reduction or elimination of construction necessary for fire and life safety or for compliance with applicable codes, standards, laws or regulations.

1. Management Information System (MIS)

a. Establishing the Project MIS

The Construction Manager shall develop a MIS to establish communication between the City, the CM-R, the Designers, and other parties on the Project. In developing the MIS, the CM-R shall interview the City’s key personnel and others to determine the type of information for reporting, the reporting format, and the desired frequency for distribution of the various reports.

b. Design Phase Procedures

REQUIRED SERVICES

As part of the MIS, the Construction Manager shall establish procedures for reporting, communication, and administration during the Design Phase.

c. **Schedule Reports**

In conjunction with the services provided as part of Time Management Services, the CM-R shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the City for corrective actions to recover any loss of progress.

d. **Project Cost Reports**

The CM-R shall prepare and distribute project cost reports that shall indicate estimated costs compared to the Construction Budget and shall make recommendations to the City, the Construction Manager and Designers for corrective action to stay within the GMP.

e. **Cash Flow Report**

The CM-R shall periodically (at least monthly and as otherwise directed) prepare and distribute a cash flow report.

f. **Design Phase Change Order Report**

The CM-R shall prepare and distribute Design Phase change order reports that shall list all City-approved change orders as of the date of the report and shall clearly identify the effect of the change orders on the GMP and the Schedule. The impact of such changes shall be distinguished so as to be clearly reviewable for audit purposes.

CONSTRUCTION BUY-OUT

Upon Construction Documents reaching approximately 90% completion, the CM-R shall receive pricing from subcontractors and suppliers and propose a GMP to be agreed upon pursuant to a change order. The CM-R will conduct construction buy-out as described below.

1. **Subcontractor/Supplier Selection**

a. Subcontractors with subcontract values expected to exceed \$250,000 or from the following trades: HVAC, electrical, plumbing, mechanical, civil/site work, audio/visual, security and roofing (hereinafter all subcontracts expected to exceed \$250,000 of falling within one or more of the foregoing categories shall be referred to collectively as "Major Subcontracts" and individually as a "Major Subcontract"). The CM-R shall not be required to choose the lowest quote among Major Subcontracts, but Contractor must provide the City with the option of reviewing or approving all Major Subcontracts.

b. **Permits, Insurance and Labor Affidavits**

The CM-R shall verify that it and where appropriate its SubContractors have secured the required building permits, bonds, insurance, labor affidavits, and waivers.

c. **Project Cost Reports**

The CM-R shall prepare and distribute the project cost reports during the Construction Buy-Out Phase. The reports shall specify the actual award prices and construction costs for the

REQUIRED SERVICES

Project, compared to the preliminary GMP.

d. Cash Flow Reports

The CM-R shall prepare and distribute cash flow reports during the Construction Buy-Out Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

2. The CM-R shall present a final GMP for the City's consideration. The GMP shall be accompanied by a GMP Exhibit, in a format reasonably acceptable to the City, that describes the basis of the GMP. Upon agreement with the City, the GMP will become a part of the Agreement, and the GMP Exhibit a contract document pursuant to a change order.

CONSTRUCTION

1. Project Management

Upon commencement of the Construction Phase, the CM-R shall assume the responsibilities of a General Contractor, but shall continue in the role as the City's representative with construction inspection, change order review, and schedule vigilance. All construction activities related to the Project shall be conducted in conformance with the applicable requirements of the Contract Documents. The CM-R shall provide the following Construction Phase services:

a. Pre-Construction Conference

In conjunction with the Designers and the City, the CM-R shall conduct one or more Pre-Construction Conferences during which the CM-R shall review the reporting procedures, site operations and other contractual requirements.

b. Onsite Management and Construction Phase Communication Procedures

The CM-R shall provide and maintain a management team on the Project site to provide contract administration. The CM-R shall establish and implement coordination and communication procedures among the CM-R, City, Designers, and Contractors.

c. Contract Administration Procedures

The CM-R shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM-R shall maintain daily job reports. The CM-R shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted.

d. Project Site Meetings

The CM-R shall conduct meetings at the Project site with each SubContractor as necessary to ensure the SubContractor's efforts remain in alignment with the project expectations for quality and schedule and to resolve problems. The CM-R shall schedule and conduct regular coordination meetings with all SubContractors, the City and Designers. The CM-R shall record, transcribe and distribute minutes to all attendees, the City and Designers. Project coordination meetings shall occur weekly or as otherwise directed by City.

e. Coordination of Other Independent Consultants/Third Party Inspectors/Special Inspections

Technical inspection and testing provided by the City shall be coordinated by the CM-R, who shall provide timely notice to the City's inspectors that the Work has progressed to a point

REQUIRED SERVICES

where inspection is required. The CM-R shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM-R is not responsible for providing, nor does the CM-R control, the actual performance of technical inspection and testing. The CM-R is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing. This subparagraph shall not relieve the CM-R or its SubContractors from their collective responsibility to perform any and all tests and inspections required of them by the approved plans and specifications or as deemed necessary by CM-R to assure itself that the work conforms to the requirements of the plans and specifications.

f. Quality Review

The CM-R shall establish and implement a program to monitor the quality of construction.

CM-R's quality program shall assure effective and timely action is taken to repair or otherwise remediate any defective construction identified by inspection or testing, whether performed by the CM-R, its SubContractors, or the City's Inspectors.

g. Substantial Completion

When the CM-R considers that the Work, or a portion thereof that the City agrees to accept separately, is substantially complete, then the CM-R shall provide the Designers and the City with a complete and comprehensive listing of all items or work or supply that remain to be corrected or completed prior to any request for final payment. The CM-R's failure to include any item of work or supply required by the Contract Documents does not relieve the CM-R of its responsibility to complete all Work in accordance with the Contract Documents.

The CM-R's list of items of work or supply to be completed or corrected shall be in writing and attached to the "Certificate of Substantial Completion" (AIA G704). The AIA G704 shall be submitted at least ten (10) days in advance of the proposed date of inspection and shall be forwarded through the Designers, who will attach its written endorsement as to whether or not it concurs with the CM-R's statement that the Work will be ready for inspection and testing on the date given. The Designers' endorsement is a convenience to the City only and shall not relieve the CM-R of its responsibility in the matter, nor shall the Designers' endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. In the event that the Designers do not concur with the CM-R's statement, the Designers shall inform the CM-R of the basis for the Designers' non-concurrence. The CM-R may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed as set forth below.

Inspection and testing shall take place at a time(s) mutually agreeable to the CM-R, the City, the City's Third-Party Inspectors and the Designers. The inspection shall include a demonstration by the CM-R that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents. The CM-R shall not be responsible for design defects that prevent the Work from functioning properly unless a system was designed by a Subcontractor as required by the Contract Documents. The CM-R shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the Designers' issuance of a written list of Unfinished Work and Defective Work, commonly referred to as a "punchlist", each item of which must be finished and corrected prior to Final Completion.

The Designers and its Consultants shall conduct all Substantial Completion inspections. The City may elect to have other persons of its choosing also participate in the inspections. Local Representatives of the State Fire Marshal's Office, and other authorities may be present, at their sole discretion, at the Substantial Completion inspection or otherwise inspect the Work

REQUIRED SERVICES

and advise the City whether the Work meets their respective requirements.

If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the City from occupying or utilizing the Work for its intended use, the CM-R shall complete or correct such item upon notification by the Designers. The CM-R shall then submit a request for a follow-up inspection by the Designers to determine Substantial Completion.

The CM-R shall proceed promptly and diligently to complete and correct items on the list of Unfinished or Defective Work. Failure to include an item on such list does not alter the responsibility of the CM-R to complete all Work in accordance with the Contract Documents.

If more than one Substantial Completion inspection is required, the CM-R shall reimburse the City for all costs of re-inspection or, at the City's option, the costs may be deducted from payments due to the CM-R.

In consultation with the Designers, the City shall determine when the CM-R's Work is substantially complete. In consultation with City, the Designers shall, prior to issuing a Certificate of Substantial Completion, prepare a list of work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion (AIA G704).

h. Final Completion

Final Completion shall be achieved on or before the date established in the Schedule and in no event any later than sixty (60) days after Substantial Completion unless otherwise stated in the Contract Documents or modified by a Change Order. Failure of the CM-R to achieve Final Completion within the time allowed under this Subparagraph shall entitle the City to consider the CM-R in substantial breach of its obligations under this Contract.

The CM-R shall notify the City and the Designers in writing of the date when the Work will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Designers, who will attach its endorsement as to whether or not it concurs in the CM-R's statement that the Work will be ready for inspection and testing on the date stated. The Designers' endorsement is a convenience to the City only and shall not relieve the CM-R of its responsibility in the matter, nor shall the Designers' endorsement be deemed to be evidence that the Work was finally complete and ready for inspection and testing. In the event that the Designers do not concur with the CM-R's statement, the Designers shall inform the CM-R of the basis for the Designers' non-concurrence. The CM-R may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed as set forth below. The final inspection and testing shall be conducted in the same manner as the inspection for Substantial Completion.

Local Representatives of the State Fire Marshal's Office and other authorities may be present at the Final Completion inspection or otherwise inspect the completed Work and advise the City whether the Work meets their respective requirements for the Project.

In consultation with the Designers, the City shall determine when the CM-R's Work is finally completed and, following completion of corrections, shall issue a Certificate of Final Completion to the CM-R.

If more than one Final Completion inspection is required, the CM-R shall reimburse the City for all costs of reinspection or, at the City's option, the costs may be deducted from payments otherwise due to the CM-R as a Cost of the Project.

Approval of Work at or as a result of any inspection required herein shall not release the CM-

REQUIRED SERVICES

R or its surety from their responsibility for complying with the Contract.

2. Time Management

a. Schedule

The CM-R shall adjust and update the Schedule and distribute copies to the City and Designers. All adjustments to the Schedule shall be made for the benefit of the Project.

b. Project Closeout Schedule

At approximately 80% completion and no less than ninety (90) days prior to the scheduled date for Substantial Completion, the CM-R will conduct a Project Closeout Review with the City, the Designers, and representatives of all end-user organizations.

Discussions shall focus on the identification and mitigation of possible delays during the project closeout process. Discussions at the meeting shall include all known construction and fiscal issues to be addressed before Substantial Completion and the parties responsible for resolution and the required resolution dates. The CM-R shall prepare a Project Closeout Schedule to document the results of the initial meeting. During the meeting,

- The CM-R and Designers will review the as-built drawings commensurate with the status of the completed construction.
- The CM-R and the City will review any approved or pending contract modifications and identify any prospective requests for modification, including a review of current cash flow and uncommitted funds.
- The City and the end-user will discuss any specialty equipment required prior to occupying the facility.

Other items to be discussed and scheduled include:

- The Above-Ceiling Inspection
- O&M Manual submission, approval and turn-over
- O&M Training
- Preliminary Operational and Functional Testing of Systems
- Mechanical Test & Balance (dry and wet sides)
- Fire Alarm and Sprinkler System testing and acceptance
- Final Operational Testing of Mechanical and Electrical Systems
- Commissioning
- System Tagging, Charts and Diagrams
- Delivery of Spare Parts, Tools, Attic Stock, and Excess Materials
- Installation and Testing of Owner-Furnished Equipment
- Landscaping and Outside Utilities

REQUIRED SERVICES

- Exterior Finish (paving, lighting, sidewalks)
- Signage
- Keying
- Final Cleanup
- Occupancy Plan

Additional Closeout meetings will be conducted at least weekly to review progress and address any issues that arise.

3. Cost Management

a. Contractor Schedule of Values

The CM-R shall determine a Schedule of Values.

b. Change Order Control

The CM-R shall establish and implement a change order control system. The control system established by the CM-R shall include an affirmative determination by the City and Designers that the resultant changed construction is in conformance with the applicable building code and other codes. CM-R's scheduling process shall recognize that such a determination may require the City to refer the matter to the City Building and Planning Offices, the Designers, or other authorities as part of the review and approval process. The control system shall also reflect the limits of the City's authority to authorize changes to the GMP and shall support the City in fulfilling City's responsibility to conform to said limitation.

c. Cost Records

At the request of the City the CM-R shall request from the SubContractors records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the SubContractor in performing the Work.

4. Management Information System (MIS) – (All must be submitted to the City and the Designers)

a. Schedule Maintenance Reports

The CM-R shall prepare and distribute schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Schedule for the Project.

b. Project Cost Reports

The CM-R shall prepare and distribute Project cost reports during the Construction Phase. The reports shall specify actual costs compared to the GMP and Schedule of Values and report the status of the CM-R's contingency fund accounts.

c. Project and Construction Budget Revisions

The CM-R shall make recommendations to the City concerning construction changes that may result in revisions to the GMP.

d. Cash Flow Reports

The CM-R shall prepare and distribute cash flow reports during the Construction Phase. The

REQUIRED SERVICES

reports shall specify actual cash flow as compared to projected cash flow.

e. **Change Order Reports**

The CM-R shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all City-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM-R may be aware.

POST CONSTRUCTION

1. **Project Management**

All post-construction activities related to the Project shall be conducted in conformance with the applicable requirements with all Federal, State and Local laws, statutes, ordinances, and the rules and regulations of all authorities having jurisdiction over the project and shall apply to the contract and the project throughout, and they will be deemed to be included in the contract the same as though herein written out in full and the City's requirements for close-out documents.

a. **Record Documents**

The CM-R shall prepare record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the City.

b. **Organize and Index Operations And Maintenance Materials**

The CM-R shall provide all operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents. Prior to final completion of the Project, the CM-R shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. This information shall then be provided to the City.

c. **Occupancy Permit**

The CM-R shall assist the City in obtaining an occupancy permit by accompanying representatives of the City and others during occupancy inspections of the Project, preparing and submitting documentation to City Building Department and other governmental agencies and coordinating final testing and other activities.

d. **Warranty Services**

CM-R shall assist City and Designers in performing warranty inspections during the warranty period of the Project and shall address all warranty issues to the satisfaction of the City.

e. **One-Year Walk Through**

CM-R shall assist City and Designers in one-year walk-through from the date of Certificate of Occupancy to identify any final warranty items required to be addressed and shall address all warranty issues to the satisfaction of the City.

2. **Time Management**

a. **Occupancy Plan**

Working with the City and the end users, the CM-R shall prepare an Occupancy Plan for the Project. This plan shall be provided to the City as part of the Project Closeout Schedule.

REQUIRED SERVICES

3. Cost Management

a. Change Orders

The CM-R shall continue to provide services related to change orders as required until project completion.

4. Management Information System (MIS)

a. Closeout Reports

At the conclusion of the Project, the CM-R shall prepare final project accounting and closeout reports.

b. MIS Reports for Move-In and Occupancy

The CM-R shall prepare and distribute reports associated with the Occupancy Plan.

END OF REQUIRED SERVICES

CM-R FEE PROPOSAL

*(Submit In a Separate Sealed Envelope with the Project Cost Matrix for
Preconstruction and Construction Fee)*

BASIS OF FEE

Based on the Scope of Services expected for the Preconstruction and Construction Services as set forth in the Statement Of Services Required, dated April 28, 2016, the CM-R's fee is the amount, established by and agreed to by both parties, which is the full amount of compensation due to the CM-R as gross profit and overhead, and for any and all expenses of the Project not included and identified as a Cost of the Work as set forth in the Contract Documents, provided that the CM-R performs all the requirements of the Contract Documents.

PRECONSTRUCTION FEE

For the Preconstruction consulting services:

Preconstruction Fee	
----------------------------	--

INSTRUCTIONS: Attach a Task-Labor Hour Matrix identifying: the major elements of work and deliverables, all as defined in the Scope of Services Required, and any additional services proposed by your firm to be provided in Preconstruction Services and the members of the proposed Project Team and their anticipated level of effort on those Tasks.

**CONSTRUCTION FEE & CHANGE
ORDER FEE**

For the Construction services provided:

Construction Fee % or Flat Fee	
---------------------------------------	--

Change Order % or Flat Fee	
-----------------------------------	--

Enter the proposed fees on the appropriate line above and include the supporting Preconstruction Fee Matrix to this CM-R Fee Proposal in the same sealed envelope, which shall clearly labeled "Fee Proposal" and identify the Proposer and the Project for which it is submitted.

Proposer

By: _____
Name

Title

DRAFT AIA[®] Document A133[™] - 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the <> day of <> in the year <>
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

<><>
<>

and the Construction Manager:
(Name, legal status and address)

<><>
<>

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

<><>
<>

The Architect:
(Name, legal status and address)

<><>
<>

The Owner's Designated Representative:
(Name, address and other information)

<>
<>
<>
<>
<>
<>

The Construction Manager's Designated Representative:
(Name, address and other information)

<>
<>
<>
<>
<>
<>

The Architect's Designated Representative:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201[™]-2007, 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.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

(Name, address and other information)

< >
< >
< >
< >
< >
< >
< >

The Owner and Construction Manager agree as follows.



TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 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 the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior

to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect.

The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 3.1.4.2 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. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

« »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the

last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Construction Manager 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.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager’s Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall 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 Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of $\ll \gg$ percent ($\ll \gg$ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of $\ll \gg$ percent ($\ll \gg$ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

<< >>
<< >>
<< >>
<< >>

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, 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.

§ 11.5 Other provisions:

<< >>

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)



STANDARD MODIFICATIONS TO THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR

OWNER: City of Sumter, South Carolina
PROJECT NUMBER: RFP #02-15/16 PROJECT NAME: City of Sumter Public Services Complex and Associated New Facilities CM @ Risk
PROCUREMENT OFFICER: Alice C. Bailey, C.P.M., CPPPO

- 1 Standard Modifications to AIA A133-2009
1.1 These Standard Modifications amend or supplement the Standard Form of Agreement Between Owner and Construction Manager as Constructor (AIA Document A133) and other provisions of Bidding and Contract Documents as indicated Below
1.2 All provisions of A133-2009, which are not so amended or supplemented, remain in full force and effect.
1.3 These Standard Modifications shall be attached to the AIA A133-2009 upon execution of the Agreement.

2 RELATED DOCUMENTS

- 2.1 AIA Document A133-2009 hereby incorporated by reference and referred to hereafter as A133.
2.2 AIA Document A201-2007 hereby incorporated by reference and referred to hereafter as A201.
2.3 Document SMTR-A201/CM-R Standard Modifications to AIA A201-2007 incorporated by reference and referred to hereafter as SMTR-A201-2007.
2.4 Document SMTR-A133 Standard Modifications to AIA A133 incorporated by reference and referred to hereafter as SMTR-A133-2009.
2.5 Other documents that may be identified in the Bidding and Contract Documents.

3 MODIFICATIONS TO A133

- 3.1 In Section 1.1, insert the section number 1.1.1 at the beginning of the opening sentence and insert the following sentences after the first sentence of this Section:

Any reference in this document to the Agreement between the Owner and Construction Manager as Constructor, AIA A133, or some abbreviated reference thereof, shall mean the AIA A133, 2009 Edition as modified by SMTR-A133 Standard Modification to Agreement Between Owner and Construction Manager as Constructor. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201, 2007 Edition as modified by SMTR-A201 Standard Modifications to the AIA A 201-7007 General Conditions to the Contract for Construction..

Convert the remaining sentences of Section 1.1 starting with the words "Upon the Owner's acceptance" into a new Section 1.1.2.

- 3.2 Delete Section 1.2 and substitute following Sections

1.2 Relationship of Parties

1.2.1 The Construction Manager shall 1) cooperate with the Architect in furthering the interests Of the Owner; 2) furnish efficient construction administration, management services and supervision; 3) furnish at all times an adequate supply of workers and materials; and 4) perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

1.2.2 The Construction Manager represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The Construction Manager agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The Construction Manager further represents that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, confidence, and candor, and that it must exercise a high standard of care in managing money and property. The Construction Manager will, to its best abilities, act in the best interests of the Owner and the timely completion of the work. The Construction Manager shall furnish design review, construction administration and management services and use the Construction Manager's best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

3.3 *In Section 2.1.2, insert the section number 2.1.2.1 before the words "The Construction Manager shall schedule" in the opening sentence of the section. Add the following new Sub-Section 2.1.2.2 to Section 2.1.2:*

2.1.2.2 The Construction Manager shall actively participate in Design Coordination Meetings with the Architect and Owner for the purpose of collaborating and coordinating the final design and Construction Documents. The Construction Manager is responsible to cooperate and assist in the coordination of the development of the design of the Project within the budgeted cost and schedule. The objective of the coordination is to assure that the design meets the Owner's Program in all respects, including but not limited to the following areas:

- Cost containment and cost monitoring;
- Cost-effective decisions;
- Compatibility with Owner's architectural standards;
- Consistency with the Owner's expectations in it's Program;
- The appropriate provision of all necessary services and utilities;
- The necessary level of environmental review and documentation;
- That the Owner is kept fully aware of the progress of the Project;
- That the Project Schedule is maintained;
- That construction quality assurance complies with the Owner's Requirements;
- That the Construction Documents are reviewed for constructability; and
- That all permits and approvals are obtained for the Owner to occupy the Project.

The Construction Manager shall review the Construction Documents, including without limitation, the Owner's Program (as appropriate) to understand the requirements of the Project.

3.4 *After the second sentence of Section 2.1.7, insert the following sentence:*

The cost of all such items shall be included in the Cost of the Work set forth in Article 6.1.

3.5 *Add the following sentences to the end of Section 2.2.1:*

Before proposing a Guaranteed Maximum Price, the Construction Manager shall carefully study and compare the various Drawings and Specifications relative to the Work, as well as the information furnished by the Owner pursuant to this Agreement, shall take field measurements of any existing conditions related to the Work, and shall observe any conditions at the site affecting it. This review is for the purpose of confirming the accuracy of the Construction Manager's estimate of the cost of the Work and for the purpose of facilitating coordination and construction by the Construction Manager. The Construction Manager's review is not for the purpose of (1) discovering design errors and omissions that are latent or are not obvious to the average Construction Manager licensed for projects of the scope and size of this Project performing a reasonable review of the Drawings and Specifications; (2) discovering violations of the International Code Council series of codes as adopted by South Carolina; (3) or discovering latent inconsistencies and ambiguities in the Drawings and Specifications. The Construction Manager shall promptly notify the Architect of any errors, inconsistencies, or omissions discovered by the Construction Manager. Such notice shall be made in writing and shall be submitted to the Architect prior to proposing a Guaranteed Maximum Price.

If requested by Owner, Construction Manager shall submit copies of all subcontractor proposals or bids to Owner for Owner's review.

3.6 *Add the following sentence to the end of the Section 2.2.7:*

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPARTMENT
SMTR-A133 Standard Modifications to AIA A133

The Construction Manager may not commence construction of any portion of the Work prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price unless the Owner and the Construction Manager agree on a fixed price or a guaranteed maximum price regarding that portion of the construction. All cost for any such work shall be included in the Cost of the Work set forth in Article 6.1.

3.7 Delete Sub-Section 2.3.2.1 and substitute the following:

2.3.2.1 The Construction Manager shall submit to Owner for Owner's review and approval the subcontractor bid or proposal list. The Construction Manager shall invite bids for all major components of the construction work. The Construction Manager shall not self-perform any construction work for which subcontractor bids or proposals are invited, unless no acceptable bids are received or a subcontractor fails to perform.

3.8 Delete the words of Sub-Section 2.3.2.2 and insert the word "RESERVED."

3.9 Add the following to the end of the last sentence of Sub-Section 2.3.2.3:

and the General Conditions of the Contract for Construction (General Conditions) as modified.

3.10 In Sub-Section 2.3.2.4, delete the words "recommends a specific" and substitute the words "proposes to subcontract with a."

3.11 In Sub-Section 2.3.2.6, delete the first word "Upon" and insert "Prior"

3.12 Delete Section 4.2.2 and substitute the following:

4.2.2 Payments are due and payable twenty-one days from the date the Construction Manager's invoice is received by the Owner for all undisputed amounts. In accordance with S.C. Code Ann. § 29-6-50, the Owner, shall pay the Construction Manager interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, no interest is due unless the Construction Manager notifies the Owner of its intent to charge interest at the time request for payment is made.

3.13 Add the following to the end of the sentence of Section 5.1.2:

shall be as set forth in the General Conditions.

3.14 Delete the words of Section 5.1.3 and insert the following:

Use of Contingency funds will not be approved to compensate Construction Manager for: (1) costs incurred as a result of the Construction Manager's breach of this Agreement or delays for which the Construction Manager is responsible; (2) correction of the Work that is not a reimbursable cost under Article 6 of this Agreement; (3) work performed pursuant to Construction Manager's warranty obligations; (4) costs incurred in connection with any dispute with the Owner or subcontractors relating to the Work; or (5) any estimating or pricing errors committed by the Construction Manager in the original GMP Proposal or subsequent Change Orders.

3.15 Delete the words of Section after 5.1.4 and insert the following:

Rental rates for Construction manager owned equipment shall not exceed the rates included in the rate schedule attached hereto as exhibit _____.

Within the Guaranteed Maximum Price ("GMP"), there shall be a Guaranteed Maximum Price for General Conditions. Any costs exceeding the respective GMP shall be the responsibility of the Construction Manager and shall not be billed under the other GMP. The cost for the respective GMPs shall include actual cost plus Construction Manager's Fee.

The Construction Manager's GMP for General Conditions shall not exceed _____ (\$_____). The GMP for the Cost of the Work shall not exceed _____ (\$_____).

Construction Manager shall include a maximum of _____ percent (____%) contingency in the GMP for the Cost of the Work. The Contingency shall be identified in the Schedule of Values and shall be drawn from within the

Contractor Rep Initials _____ Date _____

Construction Manager's Applications for Payment. The Construction Manager will use no part of this Contingency without first submitting to the Owner a request for its use and receiving the Owner's approval

3.16 *Delete Section 5.3.1 and substitute the following:*

5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Condition of the Contract for Construction as modified. As provided in the General Conditions, the Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work which negatively impact achievement of substantial completion as shown on the last updated Project Schedule issued before the date of the change order, provided that the burden of proof is on the Construction Manager to demonstrate that an extension of time is required.

3.17 *Delete the last sentence of Section 5.3.3.*

3.18 *In Section 6.6.5, delete everything after the words "process or product required by the Contract Documents" and insert a period*

3.19 *Delete the words of Section 6.6.8 and insert the word "RESERVED."*

3.20 *Add the following Section 6.6.10:*

§ 6.6.10 All costs associated with Sections 6.5 and 6.6 shall be enumerated in the Construction Manager's GMP for General Conditions or the GMP for Cost of the Work.

3.21 *Add the following Sections 6.11.1 – 6.11.4*

6.11.1 The foregoing Article 6.11 sets forth general principles and requirements for project accounting records. These principles and requirements shall be applicable to all contracts, subcontracts and purchases from suppliers for any element of cost to the Project included as a component of the Total Construction Cost. The Construction Manager undertakes to deliver the Project with the City of Sumter having full and unrestricted access (including attendance at any meeting with contractors, subcontractors, suppliers and the like) to all cost control records, procurement records and purchase orders related to the Project. The Construction Manager shall ensure that all contractors, subcontractors, suppliers and vendors maintain accounting records to support all claims for compensation from the Owner.

6.11.2 The Construction Manager shall provide to the City the procedures for its cost accounting system, including sample reports. The Owner may reasonably require modifications to said system and reports in order to improve the transparency of costs.

6.11.3 Cost Documents, whether electronic or physical, containing cost Information shall be subject to retention, review and audit by the City's representatives as necessary to substantiate claims for reimbursement. Cost Documents include, but are not limited to:

- project budget/estimate,
- cash flow statements of the Construction Manager
- job cost report,
- detailed transaction report or general ledger,
- material invoices, material receiving reports, proof of payment records,
- capital expenditure and revenue expenditure as not detailed above,
- expense reports,
- payroll reports, payroll tax returns, company tax returns, timecards, labor productivity tracking reports,
- such other available items relating to the Construction Manager's costs, income and profit as the Owner may reasonably require;
- such other items as the City may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, and
- subcontractor and supplier records as described above as they relate to the cost of the Project.

6.11.4 If an audit inspection or examination in accordance with this Article, conducted within one year after the date of

Contractor Rep Initials _____ Date _____

Substantial Completion, discloses overcharges of any nature by the Construction Manager to the Owner in excess of one percent (1%) of the total contract billings, the actual cost of the Owner's audit, in addition to the overcharge, shall be paid by the Construction Manager and shall not be considered as part of Actual Cost or included within the Guaranteed Maximum Price. Construction Manager will have thirty (30) days after notice from Owner to substantiate and provide documentation and backup for any changes/overages or findings resulting for the audit.

3.22 *Delete Section 7.1.1 and substitute the following:*

7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below, in the General Conditions, and elsewhere in the Contract Documents. In the event of a conflict between the provisions of this Article and the provisions of the General Conditions, the provisions of the General Conditions shall control unless this Article, by its clear and unambiguous terms, overrides the provisions of the General Conditions, expressly setting for by Section Number the terms of the General Conditions which are overridden by this Article.

3.23 *Delete the words of Section 7.1.3 and insert the word "RESERVED."*

3.24 *In the space provided in Sub-Section 7.1.7.3 for inserting the amount of retainage, insert "ten percent (10 %)."*

3.25 *In the space provided in Sub-Section 7.1.7.4 for inserting the amount of retainage, insert "ten (10 %)."*

3.26 *Add the following sentence to the end of Section 7.1.8:*

The percentage of retainage held on subcontracts shall not be more than ten percent (10%).

3.27 *Add the following sentence to the end of Section 7.19:*

Storage of materials off site of the construction project shall require bonding and insurance. Insurance shall name the Construction Manager and the Owner as benefactors in the event of loss, damage, or failure of delivery to the project.

3.28 *Add the following sentence to the end of the paragraph of Article 8:*

However, the penal amount of the performance bond and the penal amount of the payment bond required in Section 11.4 of AIA Document A201-2007 shall not be less than the amount of the GMP for each.

3.29 *Delete Section 9.1 and substitute the following:*

9.1 Any Claim between the Owner and the Construction Manager shall be resolved in accordance with the provisions set forth in Article 15 of A201-2007 as modified. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Architect shall be required as a condition precedent

3.30 *Delete the words of Section 9.2 and insert the word "Reserved"*

3.31 *Delete the words of Section 9.3 and insert the word "Reserved"*

3.32 *In Section 10.1.3, delete the first sentence of the last paragraph and substitute the following sentence:*

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement prior to the date of assignment provided those cost would have been reimbursable as Cost of the Work if the contract had not been terminated., unless the termination of Construction Manager is a result of default by Construction Manager as provided in A201 General Conditions as Modified.

3.33 *In Section 10.2.2, insert a period after the words "Sections 10.1.2 and 10.1.3 above" and delete everything after the inserted period*

Contractor Rep Initials _____ Date _____



3.34 Delete Section 11.4 and substitute the following:

11.4 ASSIGNMENT

The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement as a whole, or in part, without the written consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended: 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.

3.35 Add the following new Sections 11.5, 11.6, 11.7, 11.8, and 11.9:

11.5 THE OWNER'S REPRESENTATIVES:

11.5.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the responsibility for and, subject to Section 7.2.1 of the General Conditions as modified: *(Name, title, postal address, telephone numbers, and other information)*

To Be Determined
City of Sumter
21 N. Main Street
Sumter, SC 29150
803-XXX-XXXX

11.5.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions as modified: *(Name, title, postal address, telephone numbers, and other information)*

To Be Determined

11.6 THE CONSTRUCTION MANAGER'S REPRESENTATIVES:

11.6.1 Construction Manager designates the individual listed below as its Senior Representative ("Construction Manager's Senior Representative"), which individual has the responsibility for and authority to resolve disputes under Section 15.6 of the General Conditions as modified: *(Name, title, postal address, telephone numbers, and other information)*

To Be Determined

11.6.2 Construction Manager designates the individual listed below as its Construction Manager's Representative, which individual has the authority and responsibility set forth in Section 3.1.1 of the General Conditions as modified: *(Name, title, address, telephone numbers, email address, and other information)*

To Be Determined

11.7 NOTIFICATION OF CHANGE

Neither the Owner's representatives shall be changed without ten days written notice to the other party.

11.7 ECONOMIC CONFLICT OF INTEREST:

A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPARTMENT
SMTR-A133 Standard Modifications to AIA A133

the procurement officer. The City may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

11.8 Other provisions:

3.36 *In Section 12.2, Sub-Section 5, list the following documents in the space provided for listing documents:*

11.9.1 The Construction Manager shall create a log to track all project Change Orders and contingency expenditures. This log shall be updated monthly and provided with each Application for Payment. The form of the log shall be acceptable to the Owner and coordinated with the Architect's forms.

END OF DOCUMENT

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name and address)

THE ARCHITECT:
(Name and address)

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

INDEX

(Numbers and Topics in Bold are Section Headings)

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, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.4.2, 13.7.1, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4,

9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1,

12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 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, 5.2.1, 7.4.1,

9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14,

6.3.1, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4,

9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1,

3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,

4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,

15.2

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

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

Claims for Additional Time

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**

Concealed or Unknown Conditions, Claims for 3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract Administration

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

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, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The

1.1.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.7

Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

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

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Defective Work, Definition of

3.5.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3.1, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance

11.3.1.1

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials

10.2.4, 10.3

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17.1, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

Information and Services Required of the Owner

2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4.1

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of

1.1.7

Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 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, 11.4.1.4

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1, 11.4.1.5

Insurance Companies, Settlement with

11.4.10

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest

13.6

Interpretation

1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12, 15.1.4

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,

13.6.1, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

Limitations of Liability

2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6,

4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3,

11.1.2, 11.2.1, 11.3.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1,

9.3.3, 9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3,

11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Loss of Use Insurance

11.3.3

Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2.1, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1,

7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
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, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
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
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
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, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

Permits, Fees, Notices and Compliance with Laws

2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

Polychlorinated Biphenyl
10.3.1

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, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of the

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.3**

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5.1, 3.12.6, 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, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4

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

1.4.1.2, 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

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

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 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**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.4.5, **11.3.7**

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5.1, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 11.4.9, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 11.4.7, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.4.5, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of 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 the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, 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 Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the 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 and by separate contractors.

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

§ 1.2.2 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.

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 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 Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

§ 2.2.3 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. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the 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 Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, 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 reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services 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 GENERAL

§ 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 Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 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 the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 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 or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 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 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that 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, the Contractor shall promptly provide notice to the Owner and the Architect 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 the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the 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 promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 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 to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 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.

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

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

§ 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 a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of 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 as a record of the Work as constructed.

§ 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 that 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. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the 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 (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the 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. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 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. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 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 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.

§ 3.15 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 waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the 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, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce

other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 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 Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 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 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully 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 the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of 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 any other persons or entities 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 with each other through the Architect about matters arising out of or relating to the Contract. 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 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 has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 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 or entities 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 in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness 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 Sections 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 Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; 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 pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 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 in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 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 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.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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 may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period 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. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsibly in submitting names as required.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the 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 that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 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 Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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 in Article 15.

§ 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. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the 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 that 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 contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 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.

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

§ 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 prior to agreement on 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 Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 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 Section 7.3.7 shall be limited to the following:

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that 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.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a 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 the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

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

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.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 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 and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 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 the commencement or 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 mediation and arbitration; or by other causes that 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 Article 15.

§ 8.3.3 This Section 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

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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the 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 prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 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 the costs of 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 Section 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 evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the 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 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 Section 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 Section 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 withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .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 a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated 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.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

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

§ 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 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. 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 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 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.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

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 binding dispute resolution, 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, plus interest as provided for in the Contract Documents.

§ 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 that 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 prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 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 sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that 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.

§ 9.8.5 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. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 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 Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the 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 Section 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 the Contractor's 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 on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 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 canceled 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.

§ 9.10.4 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.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

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

§ 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 Sections 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 Sections 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 Section 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 permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, 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 or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 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 and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 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 the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 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 written on a builder's

risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

§ 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 that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 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.

§ 11.3.2 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 other special causes of loss 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, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 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 Section 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 canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 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 causes of loss to the extent covered by property insurance obtained pursuant to this Section 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 the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 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 as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 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 is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 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 authorize a copy to be furnished.

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 requested in writing by the Architect, be uncovered for the Architect's examination 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 that the Architect has not specifically requested to examine 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 at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the 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 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 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. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

§ 12.2.4 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 that is not in accordance with the requirements of the Contract Documents.

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

If the Owner prefers to accept Work that 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

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

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

§ 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 there under, 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 shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the 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 that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 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 Section 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 that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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

§ 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

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 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

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 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .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 Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly 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 Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 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 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; 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 Initial Decision Maker 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 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 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, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, 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 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



STANDARD MODIFICATIONS TO THE GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION

OWNER: City of Sumter, South Carolina
PROJECT NUMBER: RFP #02-15/16 PROJECT NAME: City of Sumter Public Services Complex and Associated
New Facilities CM @ Risk
PROCUREMENT OFFICER: Alice C. Bailey, C.P.M., CPPO

The AIA Document A201 - 2007 “General Conditions of the Contract for Construction”, Articles 1 through 15 inclusive, is a part of this Contract and is incorporated as fully as if herein set forth. For brevity, AIA Document A201 is also referred to in the Contract Documents collectively as the “General Conditions.” The following supplements modify, delete and/or add to the General Conditions. Where any portion of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these Standard Modifications, the unaltered provisions of the General Conditions shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

Delete Subparagraph 1.1.1 and substitute the following:

1.1.1 The Contract Documents are enumerated in the AIA A133-2009 (also the “A133”) and consist of the A133 (including supplemental conditions thereto), AIA A201 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, invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid and Addenda relating to bidding requirements ,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 AE. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Contractor and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order set forth in the Agreement, or if no order is set forth therein, as follows:

- .1 Addenda, Modifications or Change Orders to this Agreement
- .2 Supplemental conditions, if any
- .3 SMTR-A133, City of Sumter Standard Modifications to AIA Document A133-2009 (referred to individually as “SMTR-A133” and collectively with AIA Document A133-2009 as the “Agreement”).
- .4 AIA Document A133-2009 (referred to individually as “A133” or the “Agreement” and referred to collectively with SMTR-A133 as the “Agreement”).
- .5 SMTR-A201, City of Sumter Standard Modifications to AIA Document A201-2007 (referred to individually as “SMTR A201” and collectively with AIA Document A201-2007 as the “General conditions” or “Conditions of the Contract”).
- .6 AIA Document A201-2007 (referred to individually as “A201” “General conditions” or “Conditions of the Contract” and referred to collectively with SMTR-A201 as the “General conditions” or “Conditions of the Contract”).

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

- .7 Construction Drawings and Specifications indentified in the Contract Documents
- .8 Other Exhibits to the Agreement not listed in this Subparagraph 1.1.1
- .9 Request for Proposals and addenda
- .10 Statement of Services
- .11 Notice to Proceed
- .12 Contractor’s Proposal

Add the following Clause 1.1.5.1 to Subparagraph 1.1.5:

1.1.5.1 Where only part of the Work is indicated, similar parts are considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described are deemed to incorporate similar material and construction.

Add the following Subparagraph 1.1.9:

1.1.9 NOTICE TO PROCEED A document issued by the Owner to the Contractor fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

Add the following Subparagraph 1.110:

1.1.10 AE The appropriately licensed Design Professional retained by the Owner for the Project and identified in the Agreement. Wherever the word “Architect” is used in the Contract documents, it shall mean AE.

Add the following to Subparagraphs 1.2.1 & 1.4.1:

1.2.1 In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall:

1.2.1.1 provide the better quality or greater quantity of Work; or,

1.2.1.2 comply with the more stringent requirement; either or both in accordance with the AE's interpretation.

1.4.1 The Owner assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

Add the following Subparagraph 1.5.3:

1.5.3 The Owner shall retain all common law, statutory and other reserved rights, in addition to the limited use copyright, in accordance with the contract between the Owner and the AE for this Project.

ARTICLE 2 OWNER

Delete the last sentence of paragraph 2.1.1 and substitute the following:

Delete Subparagraph 2.1.2 in its entirety:

Delete the second sentence of Subparagraph 2.2.3 and substitute the following:

2.2.3 Subject to the Contractor's obligations, including those in Subparagraphs 1.5.2 and 3.2.1, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner pursuant to this Subparagraph, but shall exercise proper precautions relating to the safe performance of the Work. Neither the Owner nor the AE shall be required to conduct investigations or to furnish the Contractor with any information concerning subsurface characteristics or other conditions of the areas where the Work is to be performed beyond that which is provided in

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

the Contract Documents.

Delete the word "...under..." in the last sentence of Subparagraph 2.2.4 and substitute "...which is within..."

Delete Subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, five (5) sets of the Drawings and Project Manual and will be furnished, at actual cost to the Contractor, as many additional copies as he may require.

Delete Subparagraph 2.4 and substitute the following:

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 provide the resources needed to achieve correction of such default or neglect with diligence and promptness, the Owner may, in addition to and without prejudice to other remedies the Owner may have, proceed to correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the AE's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Owner. If the Contractor defaults on such payment or neglects to execute a Change Order, the Owner may, in addition to and without prejudice to other remedies the Owner may have, including but not limited to termination pursuant to Article 14 of the General Conditions, issue an appropriate Change Directive, and carry the out the remaining work after giving the Contractor a seven-day written notice.

Add the following Subparagraph 3.2.5:

3.2.5 The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Agency.

Add the following Subparagraph 3.2.5.1 to Paragraph 3.2:

3.2.5.1 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the AE for the AE to evaluate and respond to the Contractor's unreasonable requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

3.3.1 Delete sentences 3, 4 and 5 and insert the following:

If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give advance written notice to the Owner and AE, informing the Owner and the AE of the alternate means, methods, techniques, sequences or procedures the Contractor intends to utilize in the performance of the Work, and, unless the Owner or the AE takes exception to the proposed means, methods, techniques, sequences or procedures, the Contractor shall proceed with the Work.

Add the following clauses to Subparagraph 3.4.1:

3.4.1.1 The Contractor shall not allow the use of asbestos containing products, whether temporary or permanent and

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

whether or not incorporated or to be incorporated in the work, even if the products are nonfriable and/or contain minimal amounts of asbestos, and even though such products may still be legally installed.

3.4.1.2 The Contractor shall not allow the use of lead materials in public water applications. Lead free solder, flux and pipe must be used in all public drinking water and waste water applications. Lead free solder and flux are defined as containing less than 0.2% lead, while valves, pipes and appurtenances must contain less than 8.0% lead.

Add the following to the end of Subparagraph 3.4.2:

By making requests for substitutions, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, except as specifically indicated by the Contractor;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the AE's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent, and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

Add the following Subparagraph 3.4.4 to Paragraph 3.4:

3.4.4 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the AE to evaluate the Contractor's proposed substitutions and to make agreed-upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

ARTICLE 3 CONTRACTOR

Add the following Subparagraph 3.6.1:

3.6.1 The Contractor's attention is directed to Title 12, Chapter 9, SC Code of Laws, as amended, concerning withholding tax for nonresidents, employees, contractors and subcontractors.

Add the following two sentences to Subparagraph 3.7.1:

The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the site. The Contractor shall secure and arrange for all necessary utility connections.

Add the following Clause to Subparagraph 3.7.4:

3.7.4.1 Any adjustment, including reasonable overhead and profit, in the Contract Sum, or to the Contract Time made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5.

Delete the last sentence of Clause 3.8.2.3 and substitute the following:

3.8.2.3 The amount of the Change Order shall reflect the difference between actual costs under Clause 3.8.2.1, as documented by invoices, and the allowance amounts.

Delete 3.9.2 and replace with the following:

3.9.2 The Contractor shall employ on the Project the same Project Manager and Field Superintendent identified in the Contractor's Proposal. Should the Owner express a reasonable objection to either the Project Manager or Field

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

Superintendent during the course of the Project, the Contractor shall replace said individual with someone reasonably acceptable to the Owner.

Delete 3.9.3 and replace with the following:

3.9.3 The Contractor shall notify the Owner, in writing, of any proposed change in the Project Manager or Field Superintendent, including the reason therefore, prior to making such change. Neither the Project Manager nor the Field Superintendent shall be changed except with the consent of the Owner, which shall not be unreasonably withheld. Should the Contractor remove from or fail to maintain on the Project the approved Project Manager or Field Superintendent without the Owner's consent, Contractor's fee shall be deducted by \$50,000, provided, however, that such deduction shall not be applicable if the Project Manager or Field Superintendent ceases to be in the employ of the Contractor, is necessary to preserve safety in and around the Project, is necessary to comply with applicable law, or for some other reason that is beyond the Contractor's control.

Add the following Clauses to Subparagraph 3.10.1:

This schedule shall:

3.10.1.1 indicate the dates for the start and completion of the various elements of the Work.

3.10.1.2 be affirmed or revised upon execution of a Change Order that affects time.

3.10.1.3 provide a graphic representation of activities and events that will occur during performance of the Work in sufficient detail, and as acceptable to the Owner to show the sequencing of the various trades for each floor level, wing or work area;

3.10.1.4 identify each phase of construction and occupancy; and,

3.10.1.5 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates").

Add the following sentence to Subparagraph 3.11:

3.11 Prompt delivery to the AE of the materials and items specified above, in good order, shall be a condition precedent to the Contractor receiving a Certificate of Substantial Completion.

Add the following Subparagraph 3.15.3 to Paragraph 3.15:

3.15.3 Metals that are removed from the Project site that are deemed to be unusable by the Owner shall be removed from the project area and delivered to a site designated by the Owner. Such metals include but are not limited to copper pipe, copper pipe fittings, metal studs, stainless steel, voice and data cable, cast iron, and electrical wire.

Add the following Subparagraph to Paragraph 3.18:

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the AE, the AE'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 AE, the AE'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 AE

Insert the following after the last sentence of Subparagraph 4.2.1:

4.2.1 Notwithstanding these responsibilities, no act or omission by the AE shall be considered a waiver of any of the Owner's rights or interests.

Add the following Clause to Subparagraph 4.2. 1:

4.2.1.1 Any reference in the Contract Documents to the AE's taking action or rendering a decision within a "reasonable time" is understood to mean no more than fourteen (14) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

Delete the first sentence of Subparagraph 4.2.2 and substitute the following:

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

4.2.2 The AE, as a representative of the Owner, shall visit the site as necessary to fulfill its obligations to the Owner for inspection services, if any, and, at a minimum, to assure conformance with the AE's design as shown in the Contract Documents and to observe the progress and quality of the various components of the Contractor's Work. The AE shall: (1) keep the Owner informed about the progress and quality of the Work completed; (2) endeavor to guard the Owner against defects and deficiencies in the Work; and (3) determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

Add Clause 4.2.2.1 to Subparagraph 4.2.1:

4.2.2.1 The Contractor shall reimburse the Owner for compensation paid to the AE for additional site visits made necessary by the fault, neglect or request of the Contractor.

In Subparagraph 4.2.5 after the word "...of..." insert the words "...the Work completed and correlated with..."

Delete Subparagraph 4.2.11 and substitute the following:

4.2.11 The AE will, in the first instance, interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. Upon receipt of such request, the AE shall promptly notify the non-requesting party in writing of the details of such request. The AE's response to such requests will be made in writing within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the AE shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the AE to furnish such interpretations until fourteen (14) days after written request is made for them. An instruction that the AE may issue to the Contractor shall constitute an interpretation of the Contract Documents and shall not be construed as an act of supervision.

In the first sentence of Subparagraph 4.2.12 change "...intent of.." to "...design as Indicated in..."

Add the following Subparagraph 4.2.15:

4.2.15 In the Specifications or on the Drawings, where the words "as directed," "as required," "as approved," "as permitted" or words of like effect are used, it is to be understood that direction, requirement, approval or permission of the AE is intended. Similar words, such as "approved," "acceptable" "satisfactory," or words of like import mean approved by, acceptable to, or satisfactory to the AE.

ARTICLE 5 SUBCONTRACTORS

Add the following to Paragraph 5.1:

5.1.3 The Contractor shall not change a Subcontractor , person or entity previously selected except for reasonable cause and in agreement with the Owner. The request for substitution shall be made to the Owner in writing.

In the second sentence of Subparagraph 5.2.1, delete the words "...or the Architect".

In the third sentence of Subparagraph 5.2.1, delete the words "...or Architect..."

Add the following Sections 5.2.1.1 and 5.2.1.2:

5.2.1.1 Notwithstanding Section 5.2.1 above, the Contractor shall obtain at least three quotes from all Subcontractors with subcontract values expected to exceed \$250,000 or from the following trades: HVAC, electrical, plumbing, mechanical, civil/site work, audio/visual, security and roofing (hereinafter all subcontracts expected to exceed \$250,000 of falling within one or more of the foregoing categories shall be referred to collectively as "Major Subcontracts" and individually as a "Major Subcontract"). Contractor shall not be required to choose the lowest quote among Major Subcontracts, but Contractor must provide the Owner with the option of reviewing or approving all Major Subcontracts.

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

5.2.1.2 The provisions of Section 5.2.3 shall apply with respect to any Major Subcontract that the Owner rejects.

In the first sentence of Subparagraph 5.2.2, delete the words "...or Architect.."

In the first sentence of Subparagraph 5.2.3, delete the words "-or Architect..." in both instances where they appear. In the first sentence of Subparagraph 5.2.3 change the phrase: "If the proposed but rejected Subcontractor was reasonably capable of performing the Work . . ." to read as follows:

If the proposed but rejected Subcontractor met the specified qualifications and was demonstrably capable of performing the Work . . .

In Subparagraph 5.2.4, delete the words "...or Architect...".

Add the following sentence to Subparagraph 5.2.4:

The Contractor's Request for Substitution must be made to the Owner in writing, accompanied by supporting information.

Delete all words after "...prejudice such rights ... " in the second sentence of Subparagraph 5.3.

Add the following Subparagraph 5.3.1:

5.3.1 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following:

5.3.1.1 An agreement that the Owner is a third-party beneficiary of the Subcontract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, expressed or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement; and,

5.3.1.2 A requirement that the Subcontractor (or Sub-subcontractor) promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has, or should have had, knowledge; and,

5.3.1.3 The following Paragraphs, or Subparagraphs as appropriate, of the Conditions of the Contract: 3.2, 3.18, 5.4, 13.1.1, 13.13, 14.3 and 14.4.

Insert the following Subparagraph 5.3.2:

5.3.2 The Contractor shall assure the Owner, by affidavit or in such other manner as the Owner may approve, that all agreements between the Contractor and its Subcontractor incorporate the provisions of Subparagraph 5.3.1 as necessary to preserve and protect the rights of the Owner and the AE under the Contract Documents with respect to the work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights.

Insert the following Subparagraph 5.3.3:

5.3.3 Upon request, the Contractor shall provide to the Owner copies of all executed or issued subcontracts, purchase orders and other documents related to the Work.

Delete the last sentence of Subparagraph 5.4.1 and replace with the following:

Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

Insert the following new Clause to Subparagraph 5.4.1:

5.4.1.3 Subcontractors assigned to the Owner agree to perform assigned portions of the Work in accordance with the Contract Documents.

Contractor Rep Initials _____ Date _____



Add the following sentence to the end of Subparagraph 5.4.2:

The equitable adjustment shall be limited to direct costs.

Delete the last sentence of Subparagraph 5.4.3.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

ARTICLE 7 CHANGES IN THE WORK

Add Subparagraph 7.2.2:

7.2.2 Agreement on any Change Order shall constitute a release by the Contractor of the Owner for any and all liability under this Contract attributable to such facts or circumstances giving rise to the Change Order.

Add the following Subparagraph 7.2.3:

7.2.3 The Contractor shall not proceed with the Work of the Change Order until the Change Order is approved by the Owner in writing. All Change Orders shall be submitted on Form AIA G701 Contract Administration Change Order with appropriate documentation attached.

Delete the first sentence of Subparagraph 7.3.1 and substitute the following:

A Construction Change Directive is a written order which directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, and which is prepared by the AE on Form AIA G701 Contract Administration Change Order, and signed by the AE, the Contractor, if it agrees with the terms of the Directive, and the Owner.

Insert as the first sentence in Subparagraph 7.3.3 the following:

7.3.3 Any adjustment in the Contract Sum, including reasonable overhead and profit made pursuant to Paragraph 7.3 shall be determined in accordance with Paragraph 7.5 of this Contract.

Delete Subparagraph 7.3.7 and substitute the following:

7.3.7 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 AE as provided in Clause 7.5.1.5, on the basis of reasonable expenditures and savings to those performing the Work attributable to the change, including allowances for reasonable overhead and profit.

Delete Subparagraph 7.3.8 in its entirety and insert the following:

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 or net decrease, if any, with respect to that change.

Insert the following Subparagraph 7.3.11:

7.3.11 If the Contractor defaults or neglects to execute a Change Directive, the Owner may carry out the Work in accordance with Paragraph 2.4 and Article 6.

Insert the following Paragraph 7.5:

7.5 PRICE ADJUSTMENTS

7.5.1 METHODS OF ADJUSTMENT. Any adjustment in the Contract Sum made pursuant to this Paragraph 7.5 shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor.

7.5.1.1 by agreement on a fixed price adjustment;

7.5.1.2 by unit prices specified in the Contract or subsequently agreed upon;

7.5.1.3 by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

7.5.1.4 in such other manner as the parties may mutually agree; or,

7.5.1.5 in the absence of agreement by the parties, through a unilateral initial determination by the AE of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the AE in accordance with Clause 7.5.3.2.

7.5.2 Final Agreement. When any adjustment in the Contract Sum made pursuant to clauses in this Contract becomes final (e.g., by agreement or dispute resolution), the adjustment shall be computed and documented on Form AIA G701 Contract Administration Change Order.

7.5.3 DOCUMENTATION OF COST REASONABLENESS

7.5.3.1 CONTRACTOR'S CHANGE ORDER PROPOSAL. The Contractor shall submit a written proposal for review by the AE and the Owner. The proposal shall be submitted to the Owner's representative within the time limits specified in Subparagraph 15.1.2. All costs claimed by the Contractor shall be justifiable compared with prevailing industry standards, as adjusted for local cost conditions. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable.

7.5.3.2 CONSTRUCTION CHANGE DIRECTIVES. For a Construction Change Directive wherein the proposed method of compensation is actual costs, and pending the collection and evaluation of actual costs as required by Clause 7.5.1.3, the Contractor shall estimate the value of the changed work. The Contractor shall itemize the estimated cost into building components and shall use the labor, material and equipment unit direct costs as listed in the most current issue of the Construction Cost Data Book most applicable to the nature of the changed work, as published by R.S. Means, with a cost index adjusted for the project locale. The Contractor shall also be permitted to add overhead and profit as shown in Subparagraph 7.5.4. Where the Contractor does not properly itemize the proposed costs as requested, the AE shall provide the Owner with the itemization and this amount shall be the initial basis for compensation under Subparagraph 7.3.8. Upon conversion of the Construction Change Directive to a Change Order, the AE's cost for providing this itemization shall be deducted from the final adjustment in the Contract Sum as described in Clause 7.3.9.

7.5.4 AGREED OVERHEAD AND PROFIT RATES

7.5.4.1 For any adjustment to the Contract Sum for which overhead and profit may be recovered, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentage of cost attributable to the change in the Work. The percentage cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The total allowable combined percentage for overhead, profit, and commission including all subcontractor and sub-subcontractor overhead, profit and commission shall not exceed 15% of the actual cost of work as defined in Subparagraph 7.3.3.

7.5.4.2 Using the percentage stated, any adjustment to the Contract Sum for deleted work shall include any overhead, profit and/or commission attributable to the cost for the deleted Work.

7.5.4.3 If the Contractor initiates a Change Order proposal and the Owner is not obligated to pay for all or any part of the proposal, then the Contractor shall be responsible for any AE's fees to evaluate and process that Change Order proposal. Compensation shall be based on the Owner's contract with the AE and the rates for Additional Services contained therein, and shall be withheld from the final payment to the Contractor.

7.5.5 COST OR PRICING DATA

7.5.5.1 The Contractor shall submit cost or pricing data for all element of changed work (other than Unit Price Work) , and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of the pricing. This data shall be itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent Work, or as soon thereafter as practicable, and shall be justifiably compared with prevailing industry standards. As requested by the AE or the Owner, the Contractor's submittal shall provide an itemized breakdown of all increases and decreases in the Contract for the Contractor and each subcontractor (at any tier) in at least the following detail: material, equipment and supply quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Worker's Compensation Insurance; equipment hours and rates, and costs of premiums for bonds

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

and insurance, permit fees and sales, use or similar taxes related to the Work.

ARTICLE 8 TIME

Delete Subparagraph 8.1.2 and substitute the following:

8.1.2 The Date of Commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

Add the following to paragraph 8.2.3

8.2.3 Any time the project falls behind the projected schedule by more than ten (10) days, the Contractor shall provide a “recovery schedule” within five (5) days to the Owner. This “recovery schedule” shall be approved by the AE and the Owner.

Add the following Subparagraph 8.2.4:

8.2.4 Failure by the Contractor to commence actual physical work on the project within seven (7) days from the Date of Commencement, as established in the Notice to Proceed, will entitle the Owner to consider the Contractor in substantial breach of its obligations under this Contract. In this event, the Owner may withdraw the Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

Add the following subparagraph 8.2.5:

8.2.5 Final Completion shall be achieved within 30 days of the established date of Substantial Completion, unless otherwise amended by Change Order.

In Subparagraph 8.3.1 change “..mediation and arbitration...” to “...dispute resolution...”.

Add the following Clauses to Subparagraph 8.3.2:

.1 Claims for extensions of construction time due to adverse weather conditions shall include the U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past 5 years from the nearest reporting station. The 5-year average will determine the number of adverse weather days which the Contractor would normally expect to encounter. Extensions of time may be requested for any month of construction for days lost, which affects the critical path of construction, due to adverse weather in excess of the expected lost time. It is responsibility of the Contractor to maintain a Project daily weather log and to obtain the verification and initials of the AE’s representative on a monthly basis. The Contractor shall transmit these logs and 5-year weather data averages to the AE monthly. All claims for weather delay shall be reported within 30 days of the incident which effected the critical path. The AE will make weather delay determinations by comparing verified Contractor’s logs with the 5-year averages over the duration of the Project. All approved weather delays will be reported to the Contractor and to the Owner and shall be accumulated and granted in 1 or more Change Order. Contract time shall not be shortened by weather conditions which are more advantageous than had be predicted.

.2 Extension of time shall be Contractor’s sole remedy for delay except as noted in 8.3.2.5 below or unless the same shall have been caused by acts constituting intentional interference by the Owner with Contractor’s performance of the work and where and to the extent that such acts continue after Contractor’s notice to Owner of such interference. Owner’s exercise of any of its rights under Article 12 CORRECTION OF WORK regardless of the extent of number of such changes, or Owner’s exercise of any correction or re-execution of any defective work, shall not under any circumstances by construed as intentional interference with Contractor’s performance of the Work.

.3 Extensions of Contract Time due to unusual adverse weather conditions shall not entitle the Contractor to claims for cost due to extended project overhead.

.4 No claims for extension of time will be considered when based on delays caused by conditions existing at the

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

time bids or proposals were received, and of which the Contractor might be reasonably expected to have knowledge at the time of bidding or proposing, or upon delays caused by failure on the part of the Contractor to anticipate properly the reasonable requirements of the Work contracted for as to materials, labor and equipment. The parties acknowledge that the Contractor has performed no invasive or destructive testing of the conditions existing at the time bids or proposals were received, the Contractor has made a visual inspection of the existing conditions, and the Contractor acknowledges that it knows of no claims for extension of time, delay or additional costs that are due or pending as a result of any concealed or other site conditions existing as of the date of this Agreement.

.5 When Contractor shall be permitted an adjustment in the Contract Sum as set forth in this Paragraph 8.3.2 and as determined in accordance with Paragraph 7.5, Contractor’s entitlement to such adjustment shall apply only if the Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than seven (7) days.

ARTICLE 9 PAYMENTS AND COMPLETION

Add the following to Subparagraph 9.2.1:

9.2.1 If the project spans over two (2) fiscal years, a cash flow schedule shall be submitted.

Insert the following new subparagraph 9.2.2:

9.2.2 As requested by the AE, the Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized format approved by the AE and Owner. The breakdown shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the AE as necessary to reflect:

9.2.2.1 the description of Work (listing labor and material separately);

9.2.2.2 the total value;

9.2.2.3 the percent and value of the Work completed to date;

9.2.2.4 the percent and value of previous amounts billed; the current percent completed and amount billed; and,

9.2.2.5 the current percent completed and amount billed. Any schedule of values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "frontloading" of the value of the Work, shall be rejected. If either the schedule of values or trade breakdown had been initially approved and subsequently used, but later was found improper for any reason, then sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

Add the following sentence to Subparagraph 9.3.1:

The Contractor's Application for Payment shall be in a form acceptable to the Owner. The AE will authorize, as provided in Paragraph 9.4 and until the final pay request, monthly payments equal to ninety (90%) of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the Work, and allocable to material and equipment suitably stored for the month.

Add the following to Subparagraph 9.3.2:

Rental equipment such as, but not limited to, mobile equipment, pans, forms, scaffolding, compressors, etc., shall not be considered material stored.

Add the following Subparagraph 9.3.3.1:

Contractor’s Application and Certification for Payment shall be in the form of the AIA G702, “Application and Certification for Payment”.

Delete Subparagraph 9.6.7 in its entirety.

In Subparagraph 9.7 delete the words “...plus interest as provided in the contract documents...” in the last sentence and add the following:

9.7. “which shall be accomplished as provided in Paragraph 7.5. As used in this Subparagraph, the phrase "dispute

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

resolution order" includes any decision rendered pursuant to Paragraph 15.3. The Owner may pay interest on delayed certified progress payments to the Contractor in accordance with Paragraph 8.2 of the Agreement.

Add the following Clauses to Subparagraph 9.8.3:

9.8.3.1 Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, AE, Owner and Building Official if applicable.

9.8.3.2 The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the AE's issuance of a written list of Unfinished Work and Defective Work, commonly referred to as a "punch list", each item of which must be finished and corrected prior to Final Completion.

9.8.3.3 The AE and its Consultants shall conduct all Substantial Completion inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. Representatives of the State Fire Marshal's Office, the Building Official and other authorities having jurisdiction may be present, at their sole discretion, at the Substantial Completion inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements.

9.8.3.4 If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the Owner from occupying or utilizing the Work for its intended use, the Contractor shall complete or correct such item upon notification by the AE. The Contractor shall then submit a request for a follow-up inspection by the AE to determine Substantial Completion.

9.8.3.5 The Contractor shall proceed promptly and diligently to complete and correct items on the list of Unfinished or Defective Work. 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.

9.8.3.6 If more than one Substantial Completion inspection is required, the Contractor shall reimburse the Owner for all costs of reinspection or, at the Owner's option, the costs may be deducted from payments due to the Contractor.

Delete the last sentence of Subparagraph 9.8.5 and add the following Clauses:

Upon such acceptance and consent of surety, if any, the Owner shall make payment sufficient to increase the total payments to ninety-eight percent (98%) of the Contract Sum, less such amounts as the AE shall determine for incomplete Work and unsettled claims.

Add the following Clauses to Subparagraph 9.10.1:

9.10.1.1 Final Completion shall be achieved no later than thirty (30) days after Substantial Completion unless otherwise stated in the Contract Documents or modified by a Change Order. Failure of the Contractor to achieve Final Completion within the time allowed under this Subparagraph shall entitle to Owner to consider the Contractor in substantial breach of its obligations under this Contract.

9.10.1.2 Representatives of the State Fire Marshal's Office, the Building Official and other authorities having jurisdiction may be present at the Final Completion inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements for the Project.

9.10.1.3 The Contractor shall then submit a request for a follow-up inspection to determine Final Completion. If more than one Final Completion inspection is required, the Contractor shall reimburse the Owner for all costs of reinspection or, at the Owner's option, the costs may be deducted from payments otherwise due to the Contractor.

9.10.1.4 Approval of Work at or as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract.

Add the following Clause to Subparagraph 9.10.4:

9.10.4.4 faulty or defective Work appearing after the date of Substantial Completion.

In Subparagraph 9.10.5, after the word "...those.." insert the phrase "...specific claims in stated amounts that have been..."

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

Add the following clause 10.2.2.1:

10.2.2.1 In the event that review, inspection or other action by regulatory agencies or other parties results in the imposition of fines, fees, or other costs due to the failure of the Contractor to comply with said applicable laws, ordinances, rules, regulations and lawful orders, the Contractor shall hold harmless the Owner from all consequences arising from the Contractor's noncompliance.

Add the following clause 10.2.4.1:

10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

In Subparagraph 10.3.1 after the word "...persons ...", insert the words "...or serious losses to real or personal property...".

Add the following Clause to Subparagraph 10.3. 1:

10.3.1.1 The Owner and Contractor hereby agree that this Paragraph shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).

Add the following Clauses to Subparagraph 10.3.2:

10.3.2.1 Any adjustment in the Contract Sum, including reasonable overhead and profit, made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5 of this Contract.

10.3.2.2 The Work in the affected area shall be resumed immediately following the occurrence of any of the following events: (a) the Owner causes remedial work to be performed that results in the absence of materials or substances; or (b) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental Owner or as evidenced by a written report to both the Owner and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Owner and the Contractor.

10.3.2.3 For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Contract Documents. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

Delete Subparagraph 10.3.3 in its entirety.

ARTICLE 11 INSURANCE AND BONDS

Add the following Clauses 11.1.2.1 through 11.1.2.6 to Subparagraph 11.1.2:

11.1.2.1 Contractor's and Subcontractor's Insurance: Before commencing the Work, and until completion and final acceptance of the Work, the Contractor shall procure and maintain, at its own expense, the insurance coverages described below. Before starting the Work, Contractor shall furnish a Certificate of Insurance, in a form acceptable to Owner, evidencing the Contractor's compliance with the Agreement's insurance requirements. All insurance policies are to be written through a company duly authorized to transact that class of insurance within the jurisdiction of the Project site and shall be with insurance companies acceptable to Owner and with A.M. Best Rating of A minus or better. The Certificates and policies for the Commercial General Liability and Business

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

Automobile Liability Policy shall name Owner, and if requested, Owner's agents, as Additional Insureds for completed and ongoing operations on a primary and non-contributory basis. All Insurance Certificates shall state policy numbers, dates of expiration, policy limits, and provide that the insurance will not be cancelled or changed unless Owner has been given written notice at least thirty (30) days prior to the date of the proposed change or cancellation. If the Contractor fails to procure or maintain required insurance coverages, Owner shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of the Contractor, and Contractor shall pay the cost thereof and furnish all necessary information to make effective and maintain such insurance. Contractor shall not commence work until all insurance requirements are met.

11.1.2.2 Required Insurance Coverages: The insurance coverages to be provided include those as set forth below unless modified in an Insurance Exhibit attached to the Agreement:

11.1.2.2.1 Commercial General Liability Insurance with limits of \$1,000,000.00 per occurrence/\$1,000,000 aggregate Bodily Injury and Property Damage Liability. This coverage must, at a minimum, include coverage and/or endorsements for premises operations, products/completed operations, contractual liability assumed by Contractor under this Agreement, personal injury, advertising injury and broad form Property Damage (including coverage for explosion, collapse and underground hazards), and independent Contractor coverages. All liability policies must be written on an "occurrence" basis. Such policy shall not contain Endorsement, CG 22 94 10 01. The Commercial General Liability and Automobile Liability insurance required herein shall protect the Contractor and the Owner against liability from damages growing out of any Contractor operations (including the operation of all automobiles, trucks, and other vehicles owned or rented) in connection with the performance of this Agreement, as well as liability arising after the completion of the Contractor's operations.

11.1.2.2.2 Motor Vehicle Liability Insurance with bodily injury limits of \$1,000,000.00 and property damage limits of \$1,000,000.00 or a combined single limit of \$1,000,000.00.

11.1.2.2.3 Worker's Compensation in accordance with, and providing coverages meeting or exceeding the limits required by, the laws of the State of South Carolina jurisdiction, and Employer's Liability Insurance with the following minimum limits: \$100,000 Per Accident, \$100,000 Per Disease for Each Employee, \$500,000 aggregate.

11.1.2.2.4 Excess or Umbrella Liability Insurance with a policy limit of \$1,000,000.00 per occurrence and aggregate.

11.1.2.5 Sub-Contractor Insurance: If Contractor elects, with Owner's approval, to subcontract any portion of the Work to another Contractor, Contractor shall require of such Subcontractor insurance coverage similar to that required of Contractor hereunder and shall furnish to Owner evidence that such insurance coverages are currently in effect. Moreover, Contractor shall require any such Subcontractor to name Contractor and Owner as additional insureds on Subcontractor's Commercial General Liability Insurance and will provide Contractor with a waiver of subrogation form from such sub-Contractors worker's compensation carrier. Failure of Contractor to require Subcontractor to obtain the coverages required herein or to furnish Owner evidence of such coverage shall be grounds for termination for default.

11.1.2.6 The Contractor shall furnish one copy of each Certificate of Insurance herein required attached to each copy of the Agreement, plus three additional copies of each Certificate of Insurance herein required, which shall specifically set forth evidence of all coverages set forth above. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.
Delete Paragraph 11.3 in its entirety.

Delete Paragraph 11.3 and substitute the following:

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance in the amount of the

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis. Such property insurance shall be maintained 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 only cover the work owned by the Owner at the time of loss.

11.3.2 Property Insurance shall be written using a 'Builders Risk Coverage Form' with the following attached forms and endorsements:

11.3.2.1 Causes of Loss - Special Form; (Risks of Direct Physical Loss unless the loss is excluded or limited by the Form)

11.3.2.2 Causes of Loss - Earthquake Form; and

11.3.2.3 Flood Insurance.

11.3.3 Covered Property is the Building Under Construction described in the Policy Declarations owned by the Agency at the time of loss and includes:

11.3.3.1 Foundations;

11.3.3.2 If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:

- (1) Fixtures, machinery and equipment used to service the building; and
- (2) Building materials and supplies used for construction;

11.3.3.3 If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

11.3.4 Replacement of insured damaged work shall be covered by an appropriate Change Order. 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.

11.3.5 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.

11.3.6 The Contractor shall provide adequate insurance to protect the interests of the Contractor, Subcontractor, and Sub-subcontractor in the work.

11.3.7 The Contractor shall be responsible for the deductible in the Owner's policy. The policy is written with a deductible of \$1,000 for each occurrence.

Delete Subparagraph 11.4.1 in its entirety and insert the following Subparagraphs 11.4.1 and 11.4.2:

11.4.1 If the Contractor's work as set forth in the Scope of Work exceeds \$50,000.00, Contractor shall provide payment and performance bonds in the full amount of the Contract Sum. The payment and performance bonds, if any, shall name Owner as the obligee. Such bonds must be secured by cash or must be issued by a surety company licensed in the State of South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". Upon execution of the Contract Documents, the Contractor shall furnish to the Owner a Performance Bond and a separate Labor and Material Payment Bond in a form acceptable to the Owner. The bonds shall guarantee the Contractor's faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall remain in force until the Work has been completed and accepted by the Owner, the provisions of all guarantees required by these Contract Documents have been fulfilled, and the warranty periods and period for correction of the Work as provided in the Contract Documents have expired, or the period for filing mechanics' liens has expired, whichever occur latest, after which time the bonds shall lapse. The Contractor shall bear all costs in connection with the bonds as a part of the Contract. One executed copy of each bond shall be attached to each executed copy of the Contract Documents prior to the execution of the Contract Documents by the Owner.

11.4.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Contractor Rep Initials _____ Date _____



Add Subparagraph 11.4.3 as follows:

11.4.3 The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of:

11.4.3.1 notices of changes in the Work;

11.4.3.2 requests for reduction or release of retention;

11.4.3.3 requests for final payment; and

11.4.3.4 any other item required by the Surety.

The Owner may, in its sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

Delete Subparagraph 12.1.1 and insert the following:

12.1.1 If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including inspections of work-in-progress required by all authorities having jurisdiction over the Project, then the portion of Work so covered shall, upon demand of the AE or the Owner having jurisdiction, be uncovered for observation and be replaced at the Contractor's expense without change in the Contract Time.

Add the following Clause 12.2.1.1:

If, prior to the date of Substantial Completion, the Contractor, a Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

In the third sentence of Clause 12.2.2.1, delete the phrase "...and to make a claim for breach of warranty..."

Add the following Clause 12.2.2.1.1 to Subparagraph 12.2.2.1:

12.2.2.1.1 Leakproof Envelope Provision: The one-year period for correction of Work shall be extended to a two-year period for all exterior envelope elements of the Work should one or more fail to serve as a leakproof water and/or air barrier due to Contractor's failure to conform the Work to the Contract Documents. The Contractor's responsibility under this Clause shall extend to the repair of all damage to the building and building contents resulting from such failure.

Delete the words "one-year" from Subparagraphs 12.2.2.2, 12.2.2.3 and 12.2.5.

At the end of Clause 12.2.2.3, add the phrase '...unless otherwise provided in the Contract Documents.'

Add the following Clause 12.2.2.4 to Subparagraph 12.2.2:

12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the AE will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Delete Subparagraph 13.1.1 and substitute the following:

13.1.1 The Contract shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Contract shall be governed by the laws of the State of South Carolina.

In the second sentence of Subparagraph 13.2.1, delete the phrase "Except as provided in Subparagraph 13.2.2,..." and capitalize "...neither..."

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

Delete Subparagraph 13.2.2 in its entirety.

Add the following Subparagraphs to Paragraph 13.3:

13.3.1 Unless otherwise permitted herein, all notices contemplated by the Contract Documents shall be in writing and shall be deemed duly given:

13.3.1.1 upon actual delivery to the person identified in the A133, if delivery by hand; or,

13.3.1.2 upon receipt by the transmitting party of confirmation or reply, if delivery is by facsimile, telex or telegram; or,

13.3.1.3 upon receipt by the person identified in the Agreement, if delivery is by deposit into the United States mail, certified mail, return receipt **requested**.

13.3.2 Each such notice shall be sent to the respective party at the address provided in the Agreement, or to any other address as the respective party may designate by notice delivered pursuant hereto.

Add Subparagraph 13.4.3 as follows:

13.4.3 Notwithstanding Subparagraph 9.10.4, the following provisions (as amended) of the Contract Documents shall survive termination for whatever cause, expiration or completion:

1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service;

3.5 Warranty

3.17 Royalties, Patents and Copyrights

3.18 Indemnification

7.5.5 Cost or Pricing Data

10.2.2.1 Protection of Persons and Property

11.1 Contractor's Liability Insurance

11.4 Performance and Payment Bond

12.2 Correction of Work

13.1 Governing Law

13.4 Rights and Remedies

15 Claims & Disputes

Add the following to Subparagraph 13.5.5:

The Contractor shall give the AE timely notice in advance of tests, inspections or approvals.

Add the following Subparagraph to Paragraph 13.6:

13.6.1 Payments made under the Contract Documents are subject to the requirements of Title 29, Chapter 6 of the South Carolina Code of Laws, as amended.

Add the following Paragraph 13.8:

13.8 Drug Free Workplace and Drug Testing

13.8.1 Notice Of Requirement: Drug Free Workplace Act. The Contractor shall comply with the requirements of Title 44, Code of Laws of South Carolina, as amended; with the respect to maintaining a drug-free workplace, and shall provide such certifications of compliance as the Owner may require.

13.8.2 The Contractor shall provide documentation to the Owner that all employees of the Contractor, a Subcontractor, anyone directly or indirectly employed by them nor anyone for whose acts they may be liable (also referred to herein as "Project Personnel"), shall have completed pre-employment drug screening consistent with the requirements of employees of the Owner or otherwise acceptable to the Owner.

13.8.3 Any Project Personnel involved in an accident on the Project site involving property damage greater than \$10,000 in value or personal injury must complete at the Contractor's expense drug screening consistent with the requirements of employees of the Owner or otherwise acceptable to the Owner within twenty-four hours of the

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

accident. The Contractor shall provide documentation to the Owner that such testing has occurred.

13.8.4 The Contractor warrants and represents that all Project Personnel shall comply with drug testing for particularized suspicion of drug use consistent with the policy for Owner’s employees or otherwise acceptable to the Owner, at the Contractor's expense.

Add the following Paragraph 13.9:

13.9 CANCELLATION AFTER AWARD

This Contract may be canceled after award, but prior to issuance of the Notice to Proceed. In such event, the Contractor shall recover, as its sole remedy, its reasonable bid preparation costs.

Add the following Paragraph 13.10:

13.10 BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Owner. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

Add the following Paragraph 13.11:

13.11 Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the Owner upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

Add the following Paragraph 13.12:

13.12 UNIT PRICE WORK

13.12.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the initial Contract Sum will be deemed to include an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as identified in the Contract. The estimated quantity for each item of Work represents the Owner's best estimate of the amount of each item to be required of the Contractor, but the amounts are not guaranteed, and are solely for the purpose of comparison of Bids and determining an initial Contract Sum. Determinations of the actual quantities and classifications of Unit Price Work performed by the Contractor will be made by the AE as described below.

13.12.2 Each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's total costs, including overhead and profit, for each separately identified item.

13.12.3 The AE will review with the Contractor its preliminary determinations on such matters before rendering a written decision or issuing a recommendation on the Contractor's Applications for Payment. The AE's written decisions or recommendations will be final and binding on the Agency and the Contractor, except as modified by the AE to reflect changed factual conditions or more accurate data. The AE's written decisions or recommendations shall serve as the AE's initial decision.

Add the following Subparagraph 13.13:

13.13 PROCUREMENT OF MATERIALS BY OWNER.

The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

In Subparagraph 14.1.1, change "...30..." to "...sixty (60)". Delete Clause 14.1.1.4.

In Subparagraph 14.1.3, delete all words after "...Work executed..." and add:

Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5, provided, however, that in no event shall Contractor be entitled to payment related to those portions of the Work not executed.

Delete Subparagraph 14.2.1 and substitute the following:

14.2.1 The Owner may terminate the Contract, or any separable part of it, if the Contractor.

14.2.1.1 fails to complete the Work within the time specified in the Contract Documents, including any authorized adjustments; or,

14.2.1.2 fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments; or,

14.2.1.3 fails to make payment to Subcontractors for materials or labor in accordance with Title 29, Chapter 6 of the South Carolina Code of Laws, as amended, and the respective agreements between the Contractor and the subcontractors; or,

14.2.1.4 persistently disregards laws, ordinances, or rules, regulations or orders of a public Owner having jurisdiction; or,

14.2.1.5 fails to comply with any of the other material provisions of this Contract.

Delete Subparagraph 14.2.2, but not the subordinate Clauses (14.2.2.1 -- 14.2.2.3) and substitute the following:

14.2.2 The Owner's right to terminate this Contract under Subparagraph 14.2.1 may be exercised if the Contractor does not cure such failure within seven (7) days (or more if authorized in writing by the Owner) after receipt of the notice from the Owner specifying the general nature of the failure. The Owner shall notify the Contractor's surety within a reasonable time. When terminating pursuant to Paragraph 14.2, the Owner may, without prejudice to any other rights or remedies of the Owner, and subject to any prior rights of the surety:

Insert "...including Liquidated Damages, If any,..." after the phrase "...other damages..." in the first sentence of Subparagraph 14.2.4.

Insert the following to Subparagraph 14.3.2 after the second sentence:

Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5.

Add after Paragraph 14.2.4 the following:

14.2.5 The rights of the Owner to suspend or terminate as herein provided shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law.

Delete Subparagraphs 14.4.1 and 14.4.2 and substitute the following:

14.4.1 The performance of Work under this contract may be terminated by the Owner in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.

14.4.2 After receipt of Notice of Termination the Contractor shall complete the performance of the Work not terminated, if any, and shall stop all other Work under the contract on the date and to the extent specified in the Notice of Termination.

In Subparagraph 14.4.3 delete the phrase "...along with reasonable overhead and profit on the Work not executed".

Add the following Paragraph 14.5:

If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Paragraph 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

Insert the following after the second sentence of Subparagraph 15.1.1:

A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition.

Add the following sentence to Subparagraph 15.1.2:

Time Limits for Filing Claims. Claims by either party arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except as stated for adverse weather days in Clause 15.1.5.2. By failing to give written notice of a Claim within the time required by this Subparagraph, a party expressly waives its claim.

Add the following to Subparagraph 15.1.5.1:

Claims for an increase in the Contract Time shall be based on one additional calendar day for each full calendar day that the Contractor is prevented from working.

Add the following Clauses 15.1.5.3 and 15.1.5.4 to Subparagraph 15.1.5:

15.1.5.3 Claims for increases in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction scheduled indicating all the activities affected by the circumstances forming the basis of the Claim.

15.1.5.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due solely to the fault of the Contractor.

Delete Subparagraph 15.1.6 in its entirety and substitute the following:

15.1.6 CLAIMS FOR LISTED DAMAGES.

Notwithstanding any other provision of the Contract Documents, including Subparagraph 1.2.1, and subject to Paragraph 15.1.4, the Contractor and Owner waive Claims against each other for Listed Damages arising out of or relating to this Contract.

The Listed Damages are:

15.1.6.1 Damages incurred by the Owner for rental expenses, for losses of use prior to Final Completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and for attorney's fees, insurance and interest (excluding post judgment); and,

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

15.1.6.2 Damages incurred by the Contractor for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation; for loss of profit except anticipated profit arising directly from the Work; and for attorney's fees, insurance and interest (excluding post judgment).

15.1.6.3 This mutual waiver is applicable, without limitation, to all Listed Damages due to either party's termination in accordance with Article 14.

15.1.6.4 This mutual waiver does not apply to the extent such Listed Damages are covered by any insurance provided pursuant to this Agreement and/or relating to the Project.

Add the following to Subparagraph 15.1.7:

15.1.7 If a Claim has been resolved, the AE will prepare or obtain appropriate documentation and forward a copy of the documentation to the Owner.

Insert the following Subparagraph 15.1.8:

15.1.8 Waiver of Claims Against the AE. Notwithstanding any other provision of the Contract Documents (including paragraph 1.2.1), but subject to a duty of good faith and fair dealing, the Contractor waives all claims against both the AE and any other design professionals who provide design and/or project management services to the Owner, either directly or as independent contractors/subcontractors to the AE, for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred by the Contractor for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post judgment).

Insert the following Subparagraph 15.1.9:

15.1.9 DECISIONS OF THE AE. Claims, including those alleging an error or omission by the AE, shall be referred initially to the AE for decision. An initial decision by the AE shall be required as a condition precedent to resolution of all claims between the Contractor and Owner arising prior to the date Final Payment is due, unless thirty (30) days shall have passed after the Claim has been referred to the AE, with no decision by the AE. The AE will not decide disputes between the Contractor and persons or entities other than the Owner.

Delete Paragraphs 15.2 through 15.4.4.3 and replace with the following:

15.2 Contractor and Owner agree to attempt to resolve disputes in the first instance using a partnering approach.

15.2.1 Should disputes arise during the course of this Project, the representatives identified in Paragraphs 8.3 and 8.4 of the Agreement, along with the AE, shall attempt to resolve the dispute among themselves.

15.2.2 If the dispute is not resolved within seventy-two (72) hours, the Project Executive of the Contractor and the Owner's Director of Purchasing (or her designee) shall attempt to resolve the dispute.

15.3 Should the Contractor and Owner be unable to resolve a dispute, it will be referred to mediation per rules to be established by mutual agreement, or failing such agreement, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Procedures.

15.4 If mediation fails, then claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be tried before the Court of Common Pleas for Sumter County, South Carolina, which will preside without a jury. The Contractor and Owner expressly waive their right to a jury trial with respect to any claims, disputes, or other matters in question between the Contractor and Owner arising out of or relating to this Agreement or breach thereof. Any legal proceeding arising out of or relating to this Agreement shall include, by consolidation, joinder, or joint filing, any additional person or entity not a party to this Agreement to the extent necessary to the final resolution of the matter in controversy.

15.5 The Contractor shall include mediation provision identical to Paragraph 15.3 and a litigation provision

Contractor Rep Initials _____ Date _____



CONSTRUCTION & ENGINEERING DEPT
SMTR-A201/CM-R Standard Modifications to AIA A201
for CM-R Projects

identical to Paragraph 15.4 in its agreements with Subcontractors, Sub-Subcontractors, and suppliers.

Contractor Rep Initials _____ Date _____