

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Tule River Tribe Casino & Hotel Project»
«Porterville, CA 93257 »
«Construction of a new casino of approximately 189,900 SF, hotel of approximately 110,497 SF, and events center of approximately 25,000 SF, with pool and other associated improvements and amenities »
»

THE OWNER:

(Name, legal status and address)

«Tule River Gaming Authority»
«340 N. Reservation Road
Porterville, CA 93257
»

THE ARCHITECT:

(Name, legal status and address)

«HBG Design
Attn: Joe Baruffaldi
707 Broadway, Suite 900
San Diego, CA 92101
619.858.7888
« »

The Owner's Designated Representative:

(Name, address and other information)

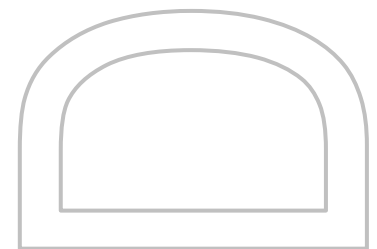
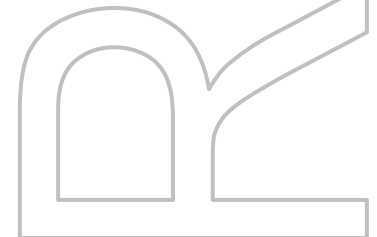
«Robert X. Martinez
Project Executive
Summit Project Management
M: 505-264-0910
rxm@summit-pm.com »
« »

The Owner, either directly or by and through its designated representative(s), may perform the duties and exercise the rights of Architect in administration of the Contract, the Project and the Work, as provided in the Contract Documents, including without limitation review and acceptance or rejection of Work, processing of applications for payment (progress and final), changes in the Work, Change Orders, and all acts and activities related thereto. Whenever and wherever Owner performs such duties and exercises such rights the term "Owner" or "Owner's Representative" shall be deemed to be substituted for the term "Architect" wherever it appears in the Contract Documents. Notwithstanding the foregoing, the Owner is not a licensed design professional and shall not be required to perform any services for which an architect's license is required.

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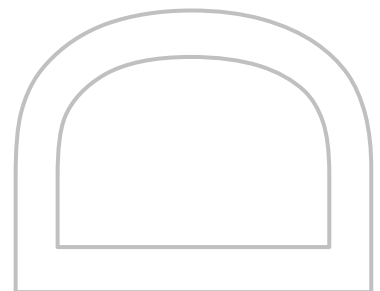
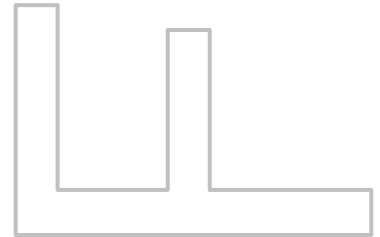
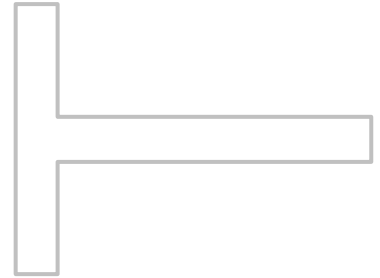
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner (Tule River Indian Tribe of California) and Contractor () dated () (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 or an RFI response for a minor change in the Work issued by the Architect per Section 7.4. 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. Except as set forth in Sections 5.3 and 5.4, below, 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 (except that this does not limit the Owner's rights as a third-party beneficiary under any subcontract or the Owner's right to directly enforce any warranty issued by a Subcontract or 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.

§ 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

There will be no Initial Decision Maker.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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. Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by Contractor are and will be familiar with the requirements of the Contract Documents for performance by them of their obligations.

§ 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.

§ 1.2.4 The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, are to be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents are to be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 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 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.

§ 1.5.2 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.

§ 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.

§ 2.1.3 Contractor shall have control over, charge of, and responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

§ 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 request such evidence only if the Owner fails to make payments to the Contractor as the Contract Documents require. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work. 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 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. Owner's exercise of the right described in this Section 2.3 shall not give rise to any extension of the Contract Time nor shall the Contract Sum include any sums, costs, or charges directly attributable to Owner's exercise of this right.

§ 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, and without voiding or impairing any warranties that may exist in favor of Owner, 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. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 OWNER'S RIGHT TO ACCELERATE THE WORK

§ 2.5.1 If the critical path of the Work is behind the progress anticipated in the Construction Schedule to the degree that the Contractor will not, at its current rate of progress, (a) achieve, by a date specified in the Construction Schedule, an

objective specified in the Construction Schedule that is critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, or (b) achieve Substantial Completion by the date required in the Contract Documents (any such date, a "**Schedule Deadline**"), the Owner may (but has no duty to) require the Contractor to accelerate the performance of the Work in order to recover from the delay, and if the Owner elects to require such acceleration, the Owner shall notify the Contractor in writing of this determination (an "**Acceleration Notice**") and the Contractor shall, within five (5) business days following its receipt of the Acceleration Notice, provide to the Owner a reasonably detailed written explanation of the measures the Contractor proposes to take in order to recover from the delay, as evidenced by a work recovery schedule approved by Owner, so that the progress of the Work will comply with the Schedule Deadline. The Contractor shall promptly, and in any event within five (5) business days following its receipt of the Acceleration Notice, commence the proposed recovery measures, except that if the Owner at any time reasonably determines that the Contractor's proposed recovery measures will not be sufficient to cause the progress of the Work to meet the Schedule Deadline, the Owner may, upon three business days' notice (at the conclusion of which period the Contractor shall have commenced such additional actions), require the Contractor to take any additional actions that Owner reasonably deems necessary to expedite progress of the Work, which actions may include increasing the number of workers performing the Work, utilizing overtime work, and requiring additional work shifts, and the Contractor shall proceed with these additional actions until the Work is back on schedule with respect to the Schedule Deadline. Except with Owner's specific written consent, the Contractor in taking recovery measures required in this Section shall not delay or defer portions of the Work that are not the subject of the Acceleration Notice. The Owner's rights under this Section are solely for the purpose of ensuring the Contractor's compliance with timing requirements in the Contract Documents, and notwithstanding the issuance of an Acceleration Notice or additional actions required by the Owner in connection with an acceleration as provided in this Section, the Contractor remains solely responsible for and has control over construction means and methods.

§ 2.5.2 To the extent the Contractor would otherwise under this Contract be entitled to an extension of the Contract Time in connection with a delay that gives rise to an Acceleration Notice, the Contractor's costs in connection with the acceleration will be reimbursable under the Contract (these reimbursable costs, the "**Reimbursable Acceleration Costs**"), and the Owner and Contractor shall execute a Change Order increasing the Contract Sum by the amount of the Reimbursable Acceleration Costs less any amounts the Contractor would have incurred even if Owner had not ordered the acceleration. To the extent the acceleration is required due to the negligence or other fault of Contractor or its Subcontractors, Contractor shall bear its costs in connection with the acceleration.

§ 2.5.3 If the parties disagree regarding whether or to what extent acceleration costs are reimbursable, then pending resolution of the dispute in accordance with the Contract the Contractor shall nevertheless proceed with the acceleration and the Owner shall pay the Contractor in accordance with the Contract any undisputed amounts due in connection with the acceleration, all in accordance with Section 15.1.3.

§ 2.6 Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and applicable laws, statutes, ordinances, codes, rules, regulations or lawful orders of public authorities ("Applicable Laws"). Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

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 (a) visited the site, (b) become generally familiar with local conditions under which the Work is to be performed, (c) correlated personal observations with requirements of the Contract Documents, and (d) evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including (i) the location, condition, layout, and nature of the Project site, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, and (iv) availability and cost of materials, tools, and equipment.

§ 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 Owner and 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 (as defined in Section 2.6), but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner 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 had the Contractor 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.

§ 3.2.5 Contractor shall notify Architect and Owner in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified in the Specifications which Contractor believes are not suitable for the purposes intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect and Owner will make a determination of such matters in writing, Contractor shall be responsible for any additional costs resulting from its failure to notify Architect and Owner that such materials, systems, procedures and methods, are not suitable, but Contractor shall not be responsible for design errors or omissions.

§ 3.2.6 Dimensions indicated on the Drawings are required dimensions, regardless of measurement per given scale. Contractor shall verify at site necessary levels, measurements, etc., for complete fabrication, assembly and installation, fitting of equipment, fixtures and the Work. Where dimensions are not indicated and exact location is not apparent, Contractor shall promptly notify Architect and Owner's Representative, and Architect shall compute the required measurements. Inadvertent discrepancies, or contradictions, or omissions of details, figures or notes of one drawing which are correctly given on another drawing shall not be cause for additional charges or claims by Contractor.

§ 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. 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.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions relating to the performance of the Work of the Contractor, Contractor's employees, Subcontractors and suppliers of all tiers, 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 (each, a "**Contractor Party**"). Consequently, as between the Owner and Contractor, and for purposes of the Contract, the acts and omissions of any Contractor Party relating to the performance of the Work will, unless the Owner expressly elects otherwise in writing, be considered the acts and omissions of the Contractor, provided, however, that nothing herein shall modify or affect Contractor's rights against any Contractor Party.

§ 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. Nothing herein shall relieve any Contractor Party from such responsibility.

§ 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 prior written 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.

§ 3.4.4 Any material specified by reference to the number, symbol, or title of a specific standard such as that of the American Society for Testing materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full context within the Specifications.

§ 3.4.5 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to Owner and one (1) copy to Architect.

§ 3.4.6 If, after execution of the Contract and prior to submittal of applicable Shop Drawings, Contractor desires to submit an alternative product or method in lieu of what has been specified or shown in the Contract Documents, Contractor may do so in writing and setting forth the following:

§ 3.4.6.1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.

§ 3.4.6.2 Reasons the substitution is advantageous and necessary, including the benefits to Owner and the Work in the event the substitution is acceptable.

§ 3.4.6.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.

§ 3.4.6.4 The adjustment, if any, in the Contract Time and the Schedule in the event the substitution is acceptable.

§ 3.4.6.5 Except for substitutions required under sections 3.4.9 below, an affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Architect. Proposals for substitutions shall be submitted in triplicate to Architect in sufficient time to allow Architect no less than fourteen (14) days for review. No substitutions will be considered or allowed without Contractor's submittal of complete substantiating data and information as stated hereinabove. Architect's review and/or approval of an alternative product or method is not a waiver or acceptance, on part of the Owner, of latent defects due to the proposed substitution.

§ 3.4.7 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions:

§ 3.4.7.1 Required for compliance with interpretation of code requirements or insurance regulations then existing.

§ 3.4.7.2 Unavailability of specified products, through no fault of Contractor.

§ 3.4.7.3 Subsequent information discloses liability of specified products to perform properly or to fit in designated space.

§ 3.4.7.4 Manufacturer/fabricator refuses to certify or guarantee performance or specified product as required.

§ 3.4.7.5 When in the judgment of Owner or Architect, that a substitution would be substantially to Owner's best interests, in terms of costs, time, or other considerations.

§ 3.4.8 Except for substitutions due to the conditions set forth in Subsections 3.4.7.1 – 3.4.7.5, whether any proposed substitution is accepted by Owner or Architect, Contractor shall reimburse Owner for any fees charged by Architect or other consultants for evaluating such proposed substitute.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that all labor, 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 Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be in the name of Owner and shall be assignable by Owner. Contractor agrees to assign to Owner at the time of final completion of the Work, any and all manufacturer's warranties not in the name of Owner relating to material and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties. Contractor shall submit a warranty plan to Owner for Owner's approval, and shall respond to Owner's calls for service of Contractor-furnished equipment within seventy-two (72) hours.

§ 3.5.2 For claims arising under a manufacturer's warranty for manufactured items used in the Project, the Owner agrees to pursue only the manufacturer to the extent the warranty claim arises after the correction period set forth in Section 12.2.2 of the General Conditions of the Contract, but only if the warranty has been duly assigned to Owner. This clarification, however, is not intended to, and shall not, relieve the Contractor from its own warranty and correction of Work obligations under Sections 3.5 and 12.2 of the General Conditions of the Contract or elsewhere in the Contract Documents or Applicable Laws.

§ 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, provided, however, that all of the same shall be included as reimbursable Costs of the Work.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Contractor shall secure and the Owner shall pay for the building permit. The Contractor shall pay for all trade permits. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all 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 applicable to performance of the Work. The Owner shall arrange for and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public body with jurisdiction over the Project.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Applicable Laws, 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 ten (10) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner 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 process a Change Order for an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes the Owner's determination or recommendation, the parties 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, unloading and handling labor, installation and all required taxes, less applicable trade discounts;
- .2 Contractor's overhead and profit 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 the difference between actual costs and the allowances under Section 3.8.2.1.

§ 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 the name and qualifications of a proposed superintendent. The Owner may reply within 14 days to the Contractor in

writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review. Failure of the Owner 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. Notwithstanding the foregoing, the Owner, with reasonable cause, may require the Contractor to replace the superintendent and/or the project manager should Owner determine such individual is no longer satisfactory for the Project. Such request for the replacement of the superintendent and/or the project manager shall be made in writing setting forth the basis of the request and shall allow Contractor sufficient time to transition to a new superintendent and/or project manager, as the case may be.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor shall submit a construction schedule for the Work for Owner's approval within two weeks of Owner's acceptance of the GMP Proposal. This schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project (provided that such revisions shall not cause time limits current under the Contract Documents to be exceeded unless due to a Change in the Work), 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 within three weeks of Owner's acceptance of the GMP Proposal 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 timely 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. The Owner shall cause the Architect to review the submittal schedule and notify Contractor in writing within 10 business days of the Architect's receipt of the submittal schedule any time periods the Architect determines to be insufficient for the Architect's review. Failure of the Architect to respond within 10 days shall be deemed acceptance of the time periods for review as set forth in the submittal schedule.

§ 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 Laws. 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 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 as part of the Contract Sum all royalties and license fees and 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, and at Contractor's expense, Contractor shall defend all claims through legal counsel selected by Contractor and approved by Owner (which approval shall not be unreasonably withheld), and indemnify and hold Owner, Tule River Tribe of California, Summit Project Management, Owner's construction lender, if any ("Lender"), and their managers, members, partners, officers, directors, agents and employees (collectively referred to as "Indemnitees") harmless from and against each and all of the following: (1) Any claim, demand, liability, loss, damage, cost, expense, including attorneys' fees, awards, penalties, fines, or judgments (individually a "Liability" and collectively "Liabilities") arising out of the performance of the Work and causing death or bodily or personal injury to persons, injury or damage to tangible property, including the loss of use therefrom (2) Any and all Liabilities sustained by the Indemnitees resulting directly from the misuse of the Project Site or any part thereof, or the improvements situated thereon, either by Contractor, or by any other person whomsoever thereon, at the invitation, express or implied, of Contractor, or by permission of Contractor, including without limitation Contractor's Subcontractors of any tier, (3) Any and all Liabilities sustained by Indemnitees as a result of any violation of any statute, regulation, rule, ordinance, order or decree by Contractor or its Subcontractors of any tier: (4) Any and all Liabilities sustained by the Indemnitees as the result of liens or stop notices, except to the extent they are recorded or served as the result of Owner's failure to pay Contractor undisputed amounts due under the Agreement, and (5) Any and all Liabilities sustained by Indemnitees as a result of the infringement of any patent or other intellectual property right, except to the extent that the infringing product, process or design is required by the Contract Documents. This indemnity shall survive the expiration or termination of this Contract and shall remain in effect until such time as an action on account of any matter covered by such indemnity is barred by the applicable statute of limitations. Contractor's indemnification obligation under this Section 3.18.1 applies when the Liability is caused in part by the negligence of an Indemnitee, but does not apply to the extent the Liability is caused by the sole negligence, active negligence or willful misconduct of an Indemnitee. It is the intent of the parties that Contractor shall only be obligated to indemnify under this Section 3.18.1 to the extent it is negligent or otherwise responsible for the Liability. Such indemnification shall extend to Liabilities which accrue or relate to events which occur after completion of the Work as well as during the progress of the Work. Nothing herein shall be deemed to abridge the rights, if any, of Owner or Contractor to seek contribution where appropriate. The Contractor's obligations in this Section 3.18 will survive the termination of the Contract. With respect to Contractor's defense obligations hereunder, the counsel selected by Contractor to defend the Indemnitee(s) shall be precluded from also representing Contractor in the dispute, unless Contractor agrees in writing to unconditionally and fully indemnify the Indemnitee(s), in all respects, with respect to the specific Liability(ies). If an Owner Controlled Insurance Program ("OCIP") or Contractor Controlled Insurance Program ("CCIP") has been procured for the Project, then Contractor's indemnity obligations under this Section 3.18

shall apply only to the extent the Liabilities are not fully covered by the OCIP or CCIP. However, Contractor's dispute of a denial of coverage under the OCIP or CCIP that is rendered with respect to one or more Liabilities shall not under any circumstances form the basis of a defense to the application of 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.

§ 3.18.3 Contractor shall include in all agreements with Subcontractors clauses substantially similar to Section 3.18.1 where the Subcontractor agrees to indemnify the Indemnitees and agrees to be liable to the Indemnitees to the same extent Contractor is liable to the Indemnitees.

§ 3.19 DESIGN BUILD-WORK

§ 3.19.1 Contractor acknowledges that it shall be responsible for the design and method of construction of those portions of the Work (the "Design-Build Work") for which only performance criteria are given or which are otherwise so identified in the Agreement or other Contract Documents, including sizing, sequence, placement and details of construction, and it hereby warrants that (1) the Design-Build Work shall be constructed in compliance with all building codes or ordinances in effect as of the date of construction and shall be fit and proper for its intended use; and (2) the design and method of construction of the Design-Build Work shall not incorporate or employ the use of any product, process or technique which may be protected by common law or statutory patent, copyright or trade secrets under Contractor or its Subcontractor shall be the lawful owner or licensee of same.

§ 3.19.2 Notwithstanding the generality of any other warranties or indemnities contained in the Contract Documents, Contractor shall indemnify, defend and hold Indemnitees harmless and shall by appropriate written agreements cause its design professional(s) and Subcontractor(s) performing the Design Build Work to indemnify, defend and hold Indemnitees harmless from any and all claims, liabilities, damages and expenses including damage to the Work and attorneys' fees and investigation costs, resulting from breach or failure by Contractor to perform fully any of the foregoing obligations or resulting from the inadequacies of the design, techniques or methods of construction of the Design-Build Work.

§ 3.19.3 The design and the drawings and specifications for the technique and method of construction of the Design-Build Work (the "Design-Build Documents") shall be prepared and shall result in work which is fit to perform its intended purpose. Contractor shall cause such Design-Build Documents to be prepared, stamped and signed by qualified, registered, licensed engineers authorized to practice their professions under the laws of the State in which the Project is located. Contractor shall cause all design-build subcontractors to grant to Owner an irrevocable and exclusive license to use all Design-Build Documents and other work product for the completion, operation, maintenance and use of the Project.

§ 3.19.4 Prior to commencement of the Design-Build Work, Contractor shall cause to be delivered to Owner copies of current insurance policies covering the errors or omissions of the persons designing the Design-Build Work with policy limits of not less than Two Million Dollars (\$2,000,000).

§ 3.19.5 All construction documents for the Design-Build Work shall be submitted to Owner for written approval within a reasonable period of time prior to submitting them to the city's Building Department. Contractor shall not commence construction of such Design-Build Work prior to obtaining such approval. Owner will provide Contractor with Owner's final comments on the design within ten (10) business days before the design plans are submitted to the appropriate governmental authority for plan check approval.

§ 3.19.6 Contractor's duties shall include, in addition to the duties imposed on Contractor under the Contract Documents, the following:

§ 3.19.6.1 Preparation for approval by Owner of all necessary design documents for the Design-Build Work illustrating the scale and relationship of Project components.

§ 3.19.6.2 Preparation of all Construction Documents setting forth the requirements of construction of the Design-Build Work in detail sufficient to enable Subcontractors and suppliers to bid their respective portions of the

Design-Build Work and to enable workmen of ordinary skill to construct the Design-Build Work. The design for all Design-Build Work shall be subjected to and validated by Building Information Modeling ("BIM").

§ 3.19.6.3 Documentation of all changes in the Construction Documents made during the course of the Work, and provision of a complete set of As-Built Drawings at the conclusion of the Work. Contractor agrees that all changes in the Construction Documents will be depicted in "clouds" shown on Contractor's drawings, and copies of any Construction Documents showing such changes shall be promptly provided to Owner, for Owner's approval.

§ 3.19.6.4 Obtaining all governmental approvals required for the Design-Build Work, plan approval, and designing the Design-Build Work so as to comply with all Applicable Laws.

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 [Deleted]

§ 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.

§ 4.1.4 Notwithstanding the rights and obligations assigned to "Architect" in the Contract, (a) the Owner is entitled to determine from time to time the degree to which the Architect will be involved in administering the Contract and in acting as an Owner's representative in administrative duties hereunder, (b) the Owner is entitled from time to time to assign to a designated person or entity (and this designee will be entitled to exercise) administrative rights and obligations this Agreement assigns to "Architect," but excluding professional design-related responsibilities, and (c) the Contractor shall recognize and cooperate with the determinations of the Owner's designee. After assigning responsibilities to the Owner's designee, the Owner will also be entitled from time to time to re-assign those responsibilities to the Architect. Without limitation, notwithstanding the various requirements in the Contract that the Contractor make deliveries to the Architect, the Contractor shall also send those deliveries to the Owner's representative to the extent required by protocols established by the Owner from time to time.

§ 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 and approved Submittals. 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 or approved Submittals. 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

The Owner and Contractor may communicate with each other directly or 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. In all circumstances the Architect and Contractor shall include the Owner's Representative in all communications regarding the Project.

§ 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 and Owner each 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 Contractor will prepare Change Orders for the Owner's review and approval, and the Owner or Architect will prepare Construction Change Directives. The Architect or Owner may authorize minor changes in the Work. The Owner 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.

§ 4.2.13 [Deleted]

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents and the Contractor may rely on such responses in performing the Work. 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 Contractor shall furnish in writing to the Owner and 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 Owner or Architect may reply within 7 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 responsively 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.

§ 5.2.5 The Contractor shall before engaging any Subcontractors provide the Owner with the Contractor's form of subcontract for the Owner's approval, shall make revisions to that form reasonably requested by the Owner, and shall use that revised form of subcontract with all Subcontractors. The Owner's review of the Contractor's form of subcontract is solely for the Owner's benefit, and the Owner assumes no responsibility arising out of that review.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, 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. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 All Work performed for Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall include a schedule of value approved by Owner, and which shall contain provisions that:

§ 5.3.2.1 provide that Owner is an express third party beneficiary of the subcontract, and preserve and protect the rights of Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such right;

§ 5.3.2.2 require such Work be performed in accordance with the requirements of the Contract Documents;

§ 5.3.2.3 include the Subcontractor's acknowledgment that Contractor has assigned its interest in the subcontract to Owner, which assignment shall become effective upon (i) the termination of the Contract or (ii) Contractor's default under the Contract Documents and Subcontractor's receipt of notification from Owner that (a) Contractor is in default under the Contract Documents or Owner has terminated the Contract; and (b) the assignment is effective;

§ 5.3.2.4 require submission to Contractor of applications for payment under each subcontract to which Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 12 of the Agreement;

§ 5.3.2.5 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that Contractor may comply in the manner provided in the Contract Documents for like claims by Contractor upon Owner;

§ 5.3.2.6 waive all rights Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by property insurance; and

§ 5.3.2.7 limit the amount which the Subcontractor may charge for overhead and profit in connection with a change in the Work to fifteen percent (15%) of the Subcontractor's cost of performing the change with its own forces, and five percent (5%) of the cost of the change when performed by the Subcontractor's subcontractor.

§ 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 pursuant to Section 14 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 in writing the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract on a going forward basis only, except the Owner does not assume the Contractor's obligations with respect to any defaults of the Contractor under the subcontract prior to the assignment.

§ 5.4.2 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.

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. 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 or with separate contractors, the Owner or its separate contractors shall have the same obligations and rights that the Contractor has 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 Owner 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.

§ 7.1.4 Owner shall order changes in the Work by giving Contractor a written change order request ("Change Order Request"), setting forth in detail the nature of the requested change. Contractor shall, as soon as reasonably possible, but not later than seven (7) days (unless a different time is agreed upon in writing) following receipt of a Change Order Request, furnish to Owner a statement setting forth in detail, with suitable breakdown by trades, the changes, if any, to the Contract Sum attributable to the changes set forth in such Change Order Request, the proposed adjustment, if any, to the Contract Time resulting from such Change Order Request and any proposed adjustments of time and costs related to unchanged Work resulting from such Change Order Request. If Owner approves such changes in writing, a change order ("Change Order") shall be executed and the Contract Sum and Contract Time shall be adjusted as set

forth in such Change Order. Failure to agree on the price of any Change Order shall not excuse Contractor from proceeding with the prosecution of the Work as changed (provided Owner issues a Construction Change Directive) for an amount equal to the amount undisputed by Owner for such a Change Order, with Contractor reserving its rights to claim additional compensation for the disputed portion of such Change Order work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor 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.

§ 7.2.2 Agreement on any Change Order constitutes a final settlement of all matters arising from or relating to the change in the Work or other event, condition, or matter that gave rise to the Change Order, including all present and future direct and indirect costs, delays, disruptions, inefficiencies, and other similar costs associated with such change, event, condition, or matter.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or Architect and signed by the Owner, 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 the 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 and/or Contract Time, the Owner 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 to the Contract Sum, a markup for the Contractor's Fee (overhead and profit) calculated as provided in Section 6.1.3 of the Agreement. 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 administrative 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 markup for the Contractor's Fee (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 to 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

With Owner's prior written approval, 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. Contractor shall notify Owner in accordance with Article 15 if Contractor believes an adjustment in the Contract Sum or extension of the Contract Time is warranted.

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 shall be determined 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 Exhibit "A" 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 Contractor is delayed in the performance of the Work on the critical path of the Schedule by any act or neglect of Owner or Architect, or by an employee, agent or representative of Owner or by changes ordered in the Work, not caused by or resulting from default, negligence or collusion on the part of Contractor or its Subcontractors of every tier, or if Contractor is delayed by separate contractors, or by unusually severe weather conditions not reasonably anticipatable for the locale, or by fire, unavoidable casualty, acts of God, "Excusable Labor Disputes" or "Excusable Transportation Delays" (as those terms are defined below), or national emergency, then the Contract Time shall be extended by Change Order for a period equal to the length of such delay as measured on the critical path of the Schedule if, within seven (7) days after the commencement of any such delay, Contractor delivers to Owner a written notice of such delay stating the nature thereof, and within seven (7) days following the expiration of any such delay, provides a written request for extension of the Contract Time by reason of such delay and such extension is approved by Owner, which approval shall not be unreasonably withheld; provided, however, that no such extension shall be given unless the delay for which a request for extension is made is included in those items for which an extension of the Contract Time is appropriate pursuant to the provisions of this Section 8.3.1. As used herein, the term "Excusable Labor Dispute" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, and which prevents Contractor from obtaining labor or materials necessary for performance of the Work and actually delays the performance of the Work; provided, however, that suitable substitute materials or labor are not reasonably obtainable. As used herein, the term "Excusable Transportation Delay" shall be defined as any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor or any of its Subcontractors or suppliers, or other delay not within the reasonable control of Contractor which prevents the transportation of necessary materials to the Project and actually delays the performance of the Work; provided, however, that suitable substitute transportation for such materials is not reasonably available. In the event Contractor fails to deliver to Owner either or both of the above-described written notices within the required seven (7) day periods, then the extension of the Contract Time attributable to the delay for which such notices are required shall be decreased by one (1) day for each day (beyond the applicable seven (7) day period) Contractor fails to deliver any required notice to Owner. In the case of a continuing cause of delay of a particular nature, Contractor shall be required to make only one such request for extension with respect thereto. No delay of the Contract Time (or right on the part of Contractor to secure any such delay) pursuant to this Section 8.3.1 shall prejudice any right Owner may have under the Contract, or otherwise, to terminate the Contract.

§ 8.3.2 Included in the Contract Time are _____ () working days that are anticipated to be lost due to adverse or inclement weather. The Contractor will advise the Owner monthly as to the status of the delays claimed to be lost due to adverse or inclement weather. A day shall be considered lost due to adverse or inclement weather if Work that is on the critical path for the Work cannot proceed as planned for at least four (4) hours of a scheduled work day ("Adverse Weather Day"). At such time as the accumulated number of Adverse Weather Days exceeds the allotment of _____ () working days, the Contractor shall be entitled to an extension of the Contract Time for the excess Adverse Weather Days, provided Contractor establishes that Work on the critical path of the approved Project schedule was actually disrupted and delayed by the adverse weather event and alternate work or other reasonable efforts could not be performed to recoup the delay without significant expense.

§ 8.3.3 Extension of time shall be Contractor's sole remedy for any delay (except for Contractor's right to terminate the Contract pursuant to the provisions of Article 14 herein). However, for delays that meet the requirements of Section 8.3.1 and 8.3.2 and are due to (i) Owner-approved changes to the Work, (ii) delays caused by the Owner or any agent, employee or representative of the Owner or by the Architect, or (iii) Adverse Weather Days in excess of the _____ () working days included in the Contract Time, then Contractor shall be entitled to receive additional compensation for each working day of delay to the critical path of the approved Project schedule in an amount equal to Contractor's actual and reasonable administrative and job site costs incurred during the period of the delay, but not to exceed the daily rate of _____ Dollars (\$ _____ .00).

§ 8.3.4 The Contractor acknowledges and agrees that adjustments to the Contract Time and/or Contract Sum will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (iii) is demonstrated by Contractor to affect the critical path of the approved Project schedule, and (iv) is of a duration of not less than one (1) day.

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 Owner, 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 In accordance with the timeline provided in the Agreement, 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 writing and 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 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 from payments received from Owner for such 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 a material breach of the Contract Documents by the Contractor.

The Owner may also independently elect to withhold a payment to the Contractor (i) to the extent the Owner in good faith deems necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.2.4 and loss resulting from the reasons set forth in Sections 9.5.1.1 through 9.5.1.8, or (ii) as otherwise specifically permitted in the Contract Documents.

§ 9.5.2 When a party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment or the Owner withholds 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.

§ 9.5.5 While any of the grounds for withholding payment under this Section 9.5 remain uncured (a) the Owner will not be deemed to be in default of the Contract by reason of the withholding, (b) the withholding will not give rise to the Contractor's rights under the Contract (including under Section 9.7) with respect to the Owner's failures to make payments, and (c) no interest will accrue on the withheld amounts.

§ 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. Should Contractor neglect or refuse to cause to be paid promptly any bill or charge legitimately incurred by it, which has previously been paid by the Owner, Owner shall have the right, but not the obligation, following at least three (3)

days prior written notice to Contractor, to pay the bill directly, and Contractor shall immediately reimburse Owner for same. If Contractor does not reimburse Owner, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder. Owner shall have the right to pay sums due to any Subcontractor or vendor by joint check payable to Contractor and each such Subcontractor and Sub-subcontractor or vendor.

§ 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. The Owner will not be deemed to have accepted Work that is not in accordance with the requirements of the Contract Documents unless the Owner accepts that Work in a writing signed by the Owner that specifically states that the Work is non-conforming but the Owner nevertheless agrees to accept that Work.

§ 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.

§ 9.6.8 If any mechanic's liens, stop notices, attachments, garnishments or suits (any of the foregoing, a "Lien") are filed or recorded against that portion of the Work, the Property, or funds related to that Work (except when the same are caused by the Owner's failure to pay or delay in payment to the Contractor undisputed amounts due under the Contract within the applicable payment period), the Contractor shall remove or bond over the Lien within 15 days after it learns of the Lien (or, in the case of a Lien due to the Owner's failure to make payment of undisputed amounts within the applicable payment period, within 15 days after the Owner makes the payment), and cause the effect of the Lien to be removed from affected property in a manner reasonably satisfactory to the Owner. If the Contractor fails to do so, the Owner may (i) defend its title and/or cause the Lien to be removed at Contractor's expense, and/or (ii) withhold payment to Contractor in such amount as is reasonably necessary to protect Owner from the Lien and/or cause its removal. The Contractor's obligations in this Section will survive the termination of the Contract.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If Owner fails to make payment to Contractor with respect to any amounts that are not in dispute between Owner and Contractor within fifteen (15) days of the expiration of the time period for payment as set forth in the Contract Documents, Contractor, upon fifteen (15) days prior written notice to Owner, may stop the Work unless within such fifteen (15) days Owner makes payment to Contractor of all undisputed amounts and delivers to Contractor Owner's good faith basis for contesting any disputed amounts. Upon the resumption of the Work following any such stoppage, Contractor shall be compensated for its reasonable costs of the shutdown, delay and start-up, plus interest as provided in the Contract Documents. If Owner has still failed to make such payment of undisputed amounts within thirty (30) days of receipt of Contractor's written notice, Contractor may terminate the Contract and recover as provided in Section 14.1.3, below.

§ 9.7.2 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payments shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an

absolute right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when (a) 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 or designated portion for its intended use without unreasonable interference by the Contractor in completing any further Work required for final completion, and (b) the Owner has received temporary certificate(s) of occupancy or the equivalent certificates and any other permits, approvals, licenses, and other documents from any governmental authority necessary for the beneficial occupancy of the Work or designated portion 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 advise the Owner whether the Owner should 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 or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect so that the Owner can determine Substantial Completion.

§ 9.8.4 When the Owner determines that 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 "punch list" items on the list accompanying the Certificate. All punch list items shall be completed no later than thirty (30) days after Substantial Completion (unless the parties agree in writing to a longer period). 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. If the total estimated cost to complete all punch-list items is \$100,000 or less, then at Owner's discretion, and upon such acceptance and consent of surety and Lender, if any, the Owner may make payment of retainage applying to such Work or designated portion thereof, less One Hundred Fifty Percent (150%) of the total estimated cost to complete the punch-list items. If the total estimated cost to complete all punch-list items is more than \$100,000, Owner will continue to hold all retainage applying to such Work.

§ 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 and the Owner agrees that the Work is acceptable under the Contract Documents and the Contract (including punch-list items) 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 by the Architect to the Owner 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 or will be paid from the final payment, (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, (5) conditional final lien releases in California statutory form signed by Contractor and its Subcontractors and suppliers of all tiers for amounts to be paid under the final pay application, and unconditional final lien releases in California statutory form signed by all other Subcontractors and suppliers of all tiers who previously received their final payments, (6) all warranties, guarantees, operating manuals and as-built drawings (in auto-CAD or other format acceptable to Owner) for the Project, and (7) a current, accurate properly labeled "as-built" plat of ALTA survey prepared and certified by a licensed land surveyor or professional engineer depicting to scale the location of the completed Project, as the same shall have been constructed, with the cost of such survey being paid by Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner herein, 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;
- .3 terms of special warranties required by the Contract Documents, or
- .4 any other provisions or obligations of the Contract that survive termination or completion (including, without limitation, indemnification and insurance).

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims, except those previously made in writing and identified by that payee as unsettled at the time of the 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. The Contractor shall include provisions in each subcontract requiring the Subcontractor to observe all appropriate safety precautions and programs and to comply with all applicable safety laws and regulations; provided, however, that nothing herein shall relieve the Subcontractor of its day-to-day responsibility for the safety of persons and property in the performance of their contracts.

§ 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 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 or its Subcontractors of any tier. 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, in the case of notices sent by Owner, and seven days after discovery, in the case of notices sent by the Contractor. 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 specifically identified to exist on the Project Site and described in the Contract Documents and those hazardous materials Contractor may bring onto the Project Site for use in the performance of the Work as required by the Contract Documents. If the Contractor encounters a hazardous material or substance or

reasonably believed to be a hazardous material or substance not described in the Contract Documents, 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. The term "material or substance," as used in Sections 10.3.1 and 10.3.2, means a chemical, substance, material or waste that is regulated as a hazardous or toxic chemical, substance, material or waste by any federal, state or local governing or regulatory body.

§ 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. The material or substance will be deemed to have been "rendered harmless" when (i) the Owner causes remedial work to be performed that results in the removal, containment or neutralization of the material or substance, and (ii) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Owner and Contractor.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, its Subcontractors and the 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 was not identified in the Contract Documents and 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 the Contract Documents identify the existence and location of such material or substance, Contractor's scope of Work includes the remediation of such material or substance, or that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity or is covered by workers' compensation or other insurance.

§ 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 (except to the extent of the Owner's responsibility for materials or substances under Section 10.3.4), 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 General

Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article 11 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 12.2.2. The certificates will show the Owner, Owner's lender and other persons designated by Owner as additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include the Owner, Tule River Tribe of California, Summit Project Management, the Lender (if any), and their respective agents, employees and officers as additional insured for (1) claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs after Substantial Completion of the Work (completed operations coverage). The additional insured coverage shall be primary and non-contributory to any of the additional insureds' general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04.

§ 11.2 Contractor's Required Insurance Coverage

The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

§ 11.2.1 Commercial General Liability

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence, Four Million Dollars (\$4,000,000.00) general aggregate, and Four Million Dollars (\$4,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

The Contractor's Commercial General Liability policy under this Section 11.2.1 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 11.2.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 11.2.3 Workers' Compensation at statutory limits. Such insurance shall include a waiver of subrogation in favor of Owner and Owner's lender.

§ 11.2.4 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) each employee, and One Million Dollars (\$1,000,000.00) policy limit.

§ 11.2.5 Excess (Umbrella) liability insurance providing coverages in excess of the same coverages described in Sections 11.2.1 (Commercial General Liability), 11.2.2 (Automobile Liability) and 11.2.4 (Employer's Liability) with a combined single limit of no less than Fifty Million Dollars (\$50,000,000.00). In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 11.2.6 Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate. Contractor shall require its Design-Build Subcontractors to procure and maintain the same insurance and limits, and shall provide Owner with certificates evidencing such coverage is in place.

§ 11.2.7 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Two Million Dollars (\$2,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate.

§ 11.2.8 Contractor shall require its Subcontractors to procure and maintain the same insurance and comply with the same requirements applicable to Contractor in Sections 11.1 and 11.2 (including, without limitation, Commercial General Liability, Automobile Liability and Employer's Liability), except that only Subcontractors performing Work with a contract value of \$250,000.00 or more are required to provide Excess (Umbrella) liability insurance, with limits to be approved by Owner.

§ 11.3 Contractor's Bonds

§ 11.3.1 Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each in the amount of one hundred percent (100%) of the Contract Sum. The cost of such bonds shall be included in the Contract Sum.

§ 11.4 Owner's Insurance

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 11.4 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section 11.4.1. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 11.4.1 Liability Insurance

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

§ 11.4.2 Required Property Insurance

The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk special form completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance

shall include the interests of mortgagees as loss payees. This insurance shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse or windstorm. If the insurance required by this Section 11.4.1 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions unless the loss can be attributed to the negligence or other fault of Contractor or its Subcontractors, in which event Contractor shall be responsible for the deductible or retention subject to its right to seek reimbursement from the responsible Subcontractor(s).

§ 11.4.3 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.4.4 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.5 Waivers of Subrogation

§ 11.5.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.5.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.5.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.5.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.6 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The

Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.7 Adjustment and Settlement of Insured Loss

§ 11.7.1 A loss insured under the property insurance required by the Agreement 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 11.4.1. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.7.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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 Owner's or 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 Owner or 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 Owner 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. After Final Completion of the Work has been achieved, 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. 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. 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 this one-year correction of Work obligation.

§ 12.2.2.2 The one-year period for correction of Work specified in Section 12.2.2.1 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 specified in Section 12.2.2.1 shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but the period for correction of the corrected Work shall be extended for one year.

§ 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 (including, without limitation, obligations relative to latent defects in the Work) other than specifically to correct the Work.

§ 12.2.6 The Contractor's obligations under this Section 12.2 include repairs to and replacement of any part of the Work or other property that is damaged by any defective Work.

§ 12.2.7 Nothing contained in this Contract shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by California law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

§ 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. The Owner's determination to accept nonconforming Work in accordance with this Section must be made in writing to be effective.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of California 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, the Contractor shall not assign the Contract as a whole or in part without written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor 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. The Contractor shall execute all consents reasonably required to facilitate such assignment, provided that the Contractor has had a reasonable opportunity to review and accept the terms of the lender that bind the Contractor. The Owner may also, without consent of the Contractor, assign the Contract to any purchaser of the Project or any affiliate of Owner, if the purchaser or affiliate (as applicable) assumes the Owner's rights and obligations under the Contract Documents, including past obligations of the Owner not remedied at the time of the assignment.

§ 13.3 RIGHTS AND REMEDIES

§ 13.3.1 Except as otherwise expressly provided in the Contract Documents, 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.

§ 13.3.2 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.

§ 13.4 [Deleted]

§ 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. 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. 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 Applicable Laws 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 the rate set forth in the Agreement at Section 15.2.

§ 13.7 STATUS OF THE CONTRACTOR

The Contractor acknowledges and agrees that it is acting under this Contract solely as an independent contractor and not as a partner, agent or employee of the Owner, and it has no authority to act for or bind or obligate the Owner except as expressly authorized in writing by the Owner.

§ 13.8 NO PERSONAL LIABILITY

No officer, director, constituent member, employee, agent or other representative of the Owner will have any personal liability for the performance of any obligations, or in respect of any liability, of the Owner under the Contract, and the Contractor shall not seek to enforce any monetary or other judgment against any such persons or their assets, all such personal liability being expressly waived by the Contractor. No officer, director, constituent member, employee, agent or other representative of the Contractor will have any personal liability for the performance of any obligations, or in

respect of any liability, of the Contractor under the Contract, and the Owner shall not seek to enforce any monetary or other judgment against any such persons or their assets, all such personal liability being expressly waived by the Owner. This Section is subject to separate agreements, if any, that specifically impose personal liability on any of the aforementioned persons.

§ 13.9 CONFIDENTIALITY

The Contractor shall maintain the confidentiality of all Confidential Information (as defined below), except to the extent that withholding such information would violate the law, prevent the Contractor from performing its duties under the Contract Documents, or create the risk of significant harm to the public. The Contractor shall require Subcontractors to similarly maintain the confidentiality of the Confidential Information. "**Confidential Information**" means all non-public information provided by, through or on behalf of the Owner that relates to the Project or the Owner its affiliates. This Section will survive the termination of the Contract.

§ 13.10 SEVERABILITY

Wherever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under Applicable Laws. If, however, any provision of the Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of the Contract or valid portions of such provision, which are hereby deemed severable, unless such continued effectiveness of the Contract, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

§ 13.11 CONFLICTS OF INTEREST

The Contractor shall perform the Work with integrity, and shall avoid conflicts of interest. The Contractor represents that it has not and shall not pay or receive any contingent fees or gratuities to or from any other party in connection with the Work, to secure preferential treatment or otherwise.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE OWNER

§ 14.1.1 Unless solely due to the actions or inactions of Owner, Architect, separate contractors or others not under the control of Contractor, if Contractor shall fail to diligently prosecute the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents (including the Contract Time), or fail to make prompt payments to its Subcontractors, materialmen or laborers from payments received from Owner for such Subcontractors, materialmen or laborers, then Owner shall have the right, if Contractor shall not have cured any such default or taken substantial and continued steps to cure such default after seven (7) days written notice thereof to (i) terminate the Contract, and Contractor shall not be entitled to any further compensation whatsoever for any Work undertaken or otherwise, (ii) take possession of and use all or any part of materials, equipment, and supplies purchased for and to be used in the performance of the Work and to use such property in the completion of the Work, and (iii) complete the Work in any manner consistent with the Contract Documents and Contract Time, including engaging the services of other parties therefor. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If after exercising any such remedy the cost to Owner of the performance of the balance of the Work is in excess of that part of the Contract Sum (including amounts retained from Contractor) which has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Owner for such excess. Owner shall provide Contractor with a detailed accounting of such excess costs and Contractor shall have an opportunity to review and respond to such accounting within ten (10) business days of receipt thereof. To the extent Contractor agrees with the Owner's accounting, Contractor shall promptly pay Owner such excess costs. If the Contractor does not agree with Owner's accounting, the parties shall resolve the dispute as provided in the Contract Documents.

§ 14.1.2 It is recognized that if Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Contract. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within seven (7) days of delivery of the request shall entitle Owner to terminate this Contract and to the accompanying rights set forth above in Section 14.1.1. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with

its own forces or with other contractors on a time and material or other appropriate basis the cost of which will be back-charged against the Contract Sum.

§ 14.1.3 Owner reserves the right to terminate this Contract without regard to fault or breach of Contractor, upon not less than five (5) business days written notice to Contractor, effective immediately unless otherwise provided in said notice. In the event of such termination, and concurrently with Owner's receipt of satisfactory lien releases from Contractor and its Subcontractors of every tier, and Owner's receipt of the Design-Build Documents, if any, Owner shall pay (including retainage sums) as the sole amount due to Contractor in connection with the Project that portion of the Contract Sum due for Work performed to the date of termination, plus any reasonable restocking charges that could not be avoided and the cost of fabricating special materials that was ordered prior to Owner's termination notice, plus Contractor's reasonable demobilization costs, less any sums already received by Contractor. In no event shall Contractor be entitled to receive any other compensation, including without limitation compensation for Contractor's lost profits or for any consequential, special or incidental damages in connection with the Contract Documents.

§ 14.1.4 Upon a determination by a court that termination of Contractor or its successor in interest pursuant to Sections 14.1.1 or 14.1.2 was wrongful, Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted set forth in Section 14.1.3.

§ 14.1.5 Upon termination of this Contract for any reason, Contractor shall:

§ 14.1.5.1 Forthwith withdraw its employees, workmen, machinery and equipment from the Project in an orderly manner, as directed by the Owner;

§ 14.1.5.2 Within thirty (30) days after such termination, Contractor shall furnish Owner with a final status report updating the progress of the Work up to the date of termination;

§ 14.1.5.3 Within five (5) business days after said termination, Contractor shall deliver to Owner all of those items enumerated in Section 9.10.2, above, to the extent that said items are available, all Shop Drawings, Project Data and Samples available, all Design-Build Documents, and all other of Contractor's engineering, procurement, accounting and construction documents and records relating to the Work performed under this Contract; and

§ 14.1.5.4 Within five (5) business days after said termination, Contractor shall assign to Owner all of Contractor's interest in any Subcontracts and purchase orders that Owner so designates in writing.

§ 14.2 TERMINATION BY THE CONTRACTOR

§ 14.2.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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; or
- .3 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.2.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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.

§ 14.2.3 The Contractor may terminate the Contract if Owner fails to make payment as provided in Section 9.7. Upon such termination, Contractor shall be entitled to recover from Owner as provided in Section 14.1.3.

§ 14.2.4 If one of the reasons described in Section 14.2.1 or 14.2.2 exists, the Contractor may, upon seven days' notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 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.

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. 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, except that Claims by the Contractor for an increase to the Contract Sum or Contract Time must be initiated within the earlier of (a) seven days after the occurrence of the event giving rise to such Claim or seven days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later, and (b) the date on which the Contractor commences any work that will be the basis of the Claim, as provided in Sections 15.1.4 and 15.1.5. The Contractor's written notice to the Owner of a condition that could give rise to a Claim does not constitute making a Claim. Compliance with the notice requirements in this Section 15.1.2 is a condition precedent to Contractor's right to pursue a Claim. The notice requirements under Section 15.1.2 exclude claims for latent defects discovered after Substantial Completion.

§ 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 undisputed 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 Owner.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum or increase in the Contract Time, written notice as provided in Section 15.1.2 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. This Section also applies to any order for a minor change in the Work that the Contractor believes should entitle it to an increase in the Contract Sum. Any Claim not made in accordance with this Section 15.1.4 will be deemed waived, regardless of any course of conduct or dealings between the parties, express or implied acceptance of additional Work, or any alleged unjust enrichment, and regardless of whether the Owner is in fact prejudiced or enriched by the failure to comply with this Section.

§ 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 in Section 15.1.4 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 Days are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that the critical path of the Construction Schedule was impacted by Adverse Weather Days as defined in Section 8.3.2. Contractor shall maintain detailed weather logs reflecting the effect of the weather on the progress of the Work. Only Adverse Weather Days affecting the critical path of the Construction Schedule shall justify an extension of time for a weather-related delay claim.

§ 15.2 DISPUTE RESOLUTION

§ 15.2.1 The parties will first attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement as a condition precedent to binding dispute resolution. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. From the Architect, the letter shall be titled "Negotiation Letter" and be addressed to the Owner's Representative and the Chairperson of Owner to invoke this clause. The recipient of such notice shall respond within fifteen (15) business days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within thirty days of the date of the response in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the dispute shall be submitted to JAMS, or its successor, for mediation pursuant to the following paragraph.

§ 15.2.2 Mediation: Except as provided herein, no action or proceeding with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted to JAMS, or its successor, for mediation. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The dispute shall be submitted to the JAMS office in Tulare County, California, or in the alternative, to the JAMS office in closest proximity to the Project. The request for mediation by Contractor shall be sent to Owner's Representative, and shall be faxed and/or emailed to Owner's Counsel, Kerry Patterson, Procopio, Cory, Hargreaves & Savitch LLP, 525 B Street, San Diego, California 92101. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the mediation process. Except for such an action or proceeding to obtain equitable relief, neither party may commence a civil action or arbitration proceeding with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 60 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action or arbitration proceeding, if the parties so desire. The provisions of this section may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against who enforcement is ordered.

§ 15.2.3 If any party commences an action or proceeding against the other party without first attempting to resolve the matter through mediation, or refuses to mediate after a written request or demand has been made, then that party shall not be entitled to recover the fees or expenses of the action or proceeding, even if they would otherwise be available to that relief. A timely response to a request or demand for mediation shall be in writing and transmitted to the demanding party within five (5) business days of the date of the request or demand for mediation to be effective. If the parties do not resolve the dispute through mediation pursuant to this Section 15.2, the method of binding dispute resolution shall be binding arbitration as provided in this Article 15.

§ 15.2.4 Limited Waiver of Sovereign Immunity: The Owner grants to Contractor a limited waiver of the Owner's sovereign immunity, solely for actions brought by Contractor, in accordance with the dispute resolutions provisions provided herein; provided, however, that any award shall be limited to actual damages and shall specifically exclude punitive, consequential, incidental, expectancy and all other special damages. This limited waiver of sovereign immunity does not extend to any action or proceeding brought against any Board Member of Owner, Tribal employee, Tribal agent, Tribal member, or any other individual acting on behalf of the Owner. This limited waiver of sovereign immunity shall not diminish or otherwise affect any defense or immunity to which such persons are entitled under the laws of the applicable jurisdiction. Except as expressly set forth herein, the Owner does not waive, limit or modify its sovereign immunity.

§ 15.2.5 Arbitration: Following the satisfaction of the mediation requirement, any controversy(ies) or claim(s) arising out of or relating to this Agreement that was not resolved during the mediation, must be resolved through binding arbitration. The arbitration shall be held only in accordance with the following procedures:

- (i) The arbitration shall be administered by JAMS 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, state the specific issue(s) in dispute, the relevant provision(s) of the Agreement, and the relief requested, be delivered to the other party to the Contract, and be 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.
- (ii) The arbitrator shall be a lawyer or retired judge with at least ten years experience in California construction law, and whose law firm, if applicable, has at no time represented or acted on behalf of either of the parties or any person with control over either of the parties.
- (iii) In the event agreement cannot be reached on the appointment of an arbitrator, the arbitrator shall be selected by JAMS under its applicable rules. In the event of any subsequent vacancy or inability to perform, an arbitrator who resigns or becomes unable to perform shall be replaced in accordance with the provision of this Section as if such replacement were an initial appointment to be made hereunder.
- (iv) Each party shall have the right to conduct discovery in connection with the arbitration proceedings, but such discovery shall be limited to the pre-hearing production of relevant documents and to such depositions, limited both in number of depositions and duration, as the arbitrator may approve.
- (v) The arbitrator shall hear any and all issues of law and of fact properly raised pursuant to the procedures herein and shall make its decision within thirty (30) calendar days after the close of evidence and briefing in the arbitration. The decision shall be issued in writing and include findings of fact, conclusions of law, and the reasons on which the decision is based.
- (vi) The arbitrator shall have no power to vary or modify any terms of this Agreement, or to decline or fail to follow applicable California law.
- (vii) Each party to the arbitration shall pay its own attorneys' and expert witness fees and any other costs associated with the arbitration. The arbitrator shall determine who shall bear the fees and expenses of the arbitration or whether the fees and expenses of the arbitration shall be shared by the parties, and if so, in what proportions. The arbitrator's determination as to the allocation of the fees and expenses of the arbitration shall be binding on the parties.
- (viii) The arbitration shall be held at a mutually agreeable location within Tulare County, California.

§ 15.2.6 Jurisdiction of Courts: A party that has participated in arbitration as set forth in Section 15.2.5 (or who has made a good faith effort to do so despite the other's failure to participate) may initiate judicial proceedings to confirm, enforce or vacate the applicable arbitration award in the United States District Court for the Eastern District of California. If, and only if, the United States District Court for the Eastern District of California determines that it is without jurisdiction, the Owner consents to be sued in the Superior Court of the State of California for the County of Tulare, but solely to compel, enforce, modify or vacate any arbitration award.

§ 15.2.7 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 15.2.7 shall be deemed to (i) preclude an award or recovery of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, (ii) limit the use of a diminished income stream in the calculation of "diminution in value" of the Work, in the event that Owner exercises its right under Section 12.3 to reduce the Contract Sum by an appropriate amount, (iii) limit the obligation of Contractor to reimburse Owner for any fines from governmental entities or additional costs and expenses for services provided by the Architect or other consultants or separate contractors, arising out of any act, error or omission of Contractor, or (iv) preclude an award or recovery of any damages, whether consequential or otherwise, covered under the terms of any insurance policies or for which a party is obligated to indemnify the other under the terms of this Contract or Applicable Laws.

