



**GENERAL CONDITIONS OF THE AGREEMENT FOR CONSTRUCTION**

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Publix Super Markets, Inc.  
**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

These General Conditions For Construction ("the General Conditions") are attached to and specifically incorporated as part of the Agreement for Construction Services (the "Agreement"), by and between Publix Super Markets, Inc. (the "Owner"), and Contractor identified in the Agreement.

ARTICLE 1  
DEFINITIONS AND GENERAL PROVISIONS

**1.1 DEFINITIONS**

**1.1.1. Addendum**

An Addendum is a written or graphic instrument issued by Owner prior to or after the execution of the Agreement which sets forth additions, deletions or other revisions to the Contract Documents or clarifications thereof.

**1.1.2. Applicable Laws**

Applicable Laws means all federal, state and local statutes, rules, regulations and ordinances applicable to Contractor's performance of the Work or construction of the Project, including, without limitation, building codes and regulations, environmental laws (including toxic waste and dust control), social security and unemployment compensation laws, workers' compensation laws, safety laws, archeological and paleontological preservation laws, all in effect as of full execution of the Agreement.

**1.1.3. Architect**

Architect is the person and entity lawfully licensed in the State of Florida to practice architecture. As used herein, the term Architect also shall include any licensed professional engineer identified and designated by Owner, or engaged by Contractor if the Project is Design-Build, to perform construction administrative services to the Project.

**1.1.3.1.** In addition to the foregoing, the Owner, in Owner's sole discretion, may assume certain duties and obligations in respect to construction administration as defined herein. The term "Architect" as used herein shall be read to include the Owner to the extent the Owner assumes such construction administration duties and obligations. To the extent that Owner gives Architect written notice that Owner will be assuming such construction administration duties and obligations of Architect, Architect will be relieved of same.

**1.1.4. Commercially Reasonable Efforts**

Commercially reasonable efforts shall mean those efforts of Contractor made in good faith and using that care, skill, diligence, and judgment as used by Florida contractors with similar experience performing similar projects under similar circumstances according to the standard of reasonableness required under Applicable Laws and under applicable trade or industry standards in the county where the project is located.

**1.1.5. Contract Documents**

The Contract Documents include all documents listed in the Agreement for Construction, which together describes the total Work.

**1.1.6. Contract Sum**

The Contract Sum is the total cost of the Work and includes all expenses, fees and taxes necessary to achieve final completion of the Project.

**1.1.7. Contract Time**

The Contract Time is the number of calendar days in which Contractor is required to achieve Substantial Completion and includes any extensions of time (i.e., calendar days) authorized by Change Order.

**1.1.8. Contractor**

Contractor is the person or entity duly licensed and authorized to perform the Work under the laws of the State of Florida. The term Contractor shall include Contractor's project manager(s) and superintendent(s) assigned to the Project, or such other persons designated in writing to Owner from time to time by Contractor.

**1.1.9. Construction Change Directive**

A Construction Change Directive is a written or oral order given by Owner or Owner's Representative during the administration of construction directing a change in the Drawings or Specifications prior to an agreement on a Change Order affecting Contract Time or Contract Sum, or both if applicable, for such work.

**1.1.10. Day(s)**

The word Day or Days as used throughout these General Conditions means calendar days unless otherwise noted.

**1.1.11. Drawings and Specifications**

The Drawings and Specifications are the graphic and written representations and descriptions of the Work and the design intent therein. Drawings include, but are not limited to, site and floor plans, sections and elevations, details, schedules, and notes elaborating on the Work.

**1.1.12. Knowledge; Discover**

The terms "knowledge," and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to Contractor, shall be interpreted to mean that which 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.

**1.1.13. Owner**

The term Owner includes Owner's Representative; provided, however, that with respect to any provisions of the Contract which require Contractor to indemnify Owner, to provide insurance for the protection of the Owner or to release Owner from, or waive, any claims Contractor may have against it, the term "Owner" shall also include the parent, related, affiliated and subsidiary companies of Owner.

**1.1.14. Partial Occupancy**

Partial Occupancy refers to a portion of the Work or Project that is Substantially Complete and which Owner may safely occupy without affecting or interfering with Contractor's remaining performance of the Work.

**1.1.15. Project**

The Project means the total or partial construction of the Work, as well as any work that may be self performed by Owner, by a vendor of Owner, or by a third party under separate contract with Owner to furnish work, equipment or services not included in the Work.

**1.1.16. Project Schedule**

The Project Schedule is the document attached to the Agreement identifying specific milestones of construction as they relate to the various trades and aspects of the Work across the Contract Time.

**1.1.17. Project Site**

The Project Site means the areas in which the Work is to be performed and such other areas as may be designated by Owner or Contractor for staging the Work or storing materials and equipment for the Work.

**1.1.18. Punch list Items**

Punch List Items mean those remaining aspects of the Work at Substantial Completion of all or any part of the Work, as listed by Contractor, Architect and Owner that are minor in nature so as not to interfere with Owner's or its agent's, contractor's, or buyer's use and occupancy of all or any portion of the Work for its intended purposes.

**1.1.19. Reasonably Inferable**

Reasonably inferable and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project in exercising the care, skill, and diligence required of a contractor

using commercially reasonable efforts, including, but not limited to, miscellaneous and ancillary labor and materials necessary for the implementation of a particular building system, component, or design intent identified in the Construction Documents or to meet Applicable Laws.

**1.1.20. Subcontractors**

Subcontractor(s) are those persons or entities, including without limitation, consultants, suppliers, laborers, and all other persons or firms hired by Contractor to perform any aspect of the Work.

**1.1.21. Substantial Completion**

Substantial Completion is the stage in the performance of the Work when a final Certificate of Occupancy and/or all other necessary permits, approvals, licenses, inspections by and other documents from governmental authorities are obtained by Contractor for the beneficial occupancy of the Project and the Work is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended purposes. See ¶ 3.6 for requirements of Substantial Completion.

**1.1.22. Work**

The Work includes all of the necessary labor, services, equipment and materials required for the construction of the Project and for Contractor to fulfill Contractor's obligations, in accordance with the Contract Documents. Further, the Work shall include the necessary labor, services, equipment and materials necessary to or required for work that is reasonably inferable from the Contract Documents. The Work may constitute the whole or a part of the Project.

**1.2. CORRELATION, REVIEW, AND INTENT OF THE CONTRACT DOCUMENTS**

**1.2.1.** The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Contractor shall be required to perform to the extent consistent with the Contract Documents. In the case of an inconsistency in or among the Contract Documents or between the Contract Documents and Applicable Laws, Contractor shall provide the better quality or greater quantity of Work or the more stringent requirement.

**1.2.2.** Contractor represents and warrants that Contractor has thoroughly reviewed the Contract Documents in such depth as is consistent with Contractor's Commercially Reasonable Efforts, and to Contractor's knowledge, the Contract Documents contain sufficient details and information necessary to complete the Work in accordance with the design intent, on or before the expiration of the Contract Time, within the Contract Sum, and in accordance with Applicable Law affecting the Work and the Project. In the event Contractor, in the exercise of Contractor's commercially reasonable efforts, discovers any discrepancies, omissions, errors, or violations of Applicable Laws, Contractor shall immediately notify in writing Owner and Architect of such matters and shall bear appropriate responsibility and the related costs and expense for its failure to do so.

**1.2.3.** Contractor shall not rely on the divisional organization of the Project manual or the arrangement and order of the Drawings to limit the extent of the Work.

**1.2.4.** Contractor represents and warrants that Contractor has correlated the Contract Documents and Owner Information and has visited the Project Site, and that Contractor has no knowledge of any discrepancies, omissions, or conflicts in or among the Contract Documents and information supplied by Owner. If Contractor becomes aware of any such discrepancies, omissions, or conflicts during any stage of the Work, Contractor will immediately notify Architect and Owner in writing in order to obtain specific instructions on how to proceed with the Work.

**1.2.5.** The Drawings show conditions as they are believed to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute representation by or on behalf of Owner that such conditions actually exist.

**1.2.6.** The paragraph headings and sub-headings contained in these General Conditions are for reference purposes only and shall not be construed to affect or limit the rights and obligations of Owner or Contractor.

### **1.3. CONDITIONS OF THE PROJECT SITE**

**1.3.1.** Contractor represents and warrants that Contractor has visited and examined the Project Site, has become familiar with the local site conditions under which the Work is to be performed, has compared the conditions of the Project Site with the Contract Documents, and has verified and become familiar with the conditions at the Project Site affecting the Work.

**1.3.2.** Contractor represents and warrants that Contractor has become familiar with the local conditions affecting Contractor's performance of the Work, including, but not limited to (1) anticipated labor supply and costs, (2) availability of materials and equipment, and (3) other similar issues pertinent to execution of the Work.

**1.3.3.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given promptly to the other party and in no event later than three (3) days after first observance of the conditions. Contractor shall not disturb the encountered conditions until Owner, Contractor, and Architect have reviewed the encountered conditions and Owner has given Contractor direction to proceed in light of the encountered conditions. Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both; provided, however, that any such adjustment shall be pursuant to Article 10. Owner shall determine, in its sole discretion, if the conditions at the site are materially different from those indicated in the Contract Documents and may permit a Change Order. Claims by either party in opposition to such determination shall be made as set forth in Article 15.

**1.3.4.** Contractor expressly acknowledges that other than the information provided in the Contract Documents, any information, materials, test data, or geotechnical reports (if not incorporated into the Contract Documents) provided by Owner is solely for the convenience of Contractor. Owner neither represents nor warrants to Contractor the accuracy, completeness, or adequacy of such information, materials or data. Contractor shall independently verify that Contractor has sufficient and adequate information, materials, or data to perform the Work.

### **1.4. COPIES FURNISHED AND OWNERSHIP OF THE DRAWINGS**

**1.4.1.** For Stipulated Lump Sum and GMP Agreements, Owner at Owner's expense shall furnish to Contractor, upon its request, up to ten (10) copies of the Drawings (including the Project Specifications). Owner will deposit reproducible drawings with a reproduction company of its choice, from which Contractor may purchase additional copies, the cost of which shall be included in the Contract Sum. Contractor shall pay the reproduction company's usual charge for reproduction and handling.

**1.4.2.** All Contract Documents, electronic or otherwise, furnished by Owner are and shall remain Owner's property, who shall retain all intellectual property rights (common law, statutory, or otherwise) therein, unless otherwise set forth in the agreement between Owner and Architect. Contractor shall not publish the Contract Documents or use the documents for any purpose other than executing the Work and completing the Project. Upon completion of the Project and at Owner's request, Contractor shall return or suitably account for all copies of the Contract Documents (including without limitation, notices, memoranda, minutes, and mark-ups) obtained pursuant to ¶ 1.4.1 above from Owner or Architect, or any other design professional, during the course of completing the Project. Contractor, however, may retain one record set.

**1.4.3.** If during the performance of the Work Contractor or any of Contractor's Subcontractors violates ¶ 1.4.2 or any other license or copyright owned by a third party, Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold Owner harmless from loss on account thereof. Contractor, however, 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 the Contract Documents or other documents prepared by Owner or someone acting on behalf of Owner, unless Contractor discovered such infringement and failed to notify Owner and



Architect in writing or, in the exercise of its due diligence, Contractor should have discovered such infringement.

## **1.5. CONFIDENTIALITY**

**1.5.1.** Contractor warrants and represents that Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except: (1) with prior written consent of Owner; (2) information that was in the public domain prior to the date of this Agreement; (3) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of Contractor; or (4) as may be required to perform the Work or by any Applicable Law.

**1.5.2.** Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment for the Work to warrant and represent all items set forth in this ¶ 1.5.

**1.5.3.** The representations and warranties contained in this ¶ 1.5 shall survive the complete performance of the Work or earlier termination of this Agreement.

**1.5.4.** Contractor acknowledges and agrees that if Contractor should breach the covenants or obligations of this ¶1.5 Owner would suffer irreparable damage. Accordingly, Contractor agrees that in addition to other remedies that may be available in law or at equity (including but not limited to an action at law for money damages), Owner shall be entitled upon application to a court of competent jurisdiction to an injunction to specifically enforce the terms of the Agreement.

## ARTICLE 2 OWNER

### **2.1 GENERAL**

#### **2.1.1. Owner's Representative**

Owner shall, at all times, designate an Owner's representative for the Project. The person so designated will be as identified in the Agreement between Owner and Contractor. Owner's Representative shall be fully acquainted with the Work and authorized to act on Owner's behalf and bind Owner with respect to the Work on the Project. Owner's Representative shall be authorized to execute written Change Orders in accordance with Article 10 below. In addition, Owner's Representative shall be authorized to review and approve recommendations on all requests submitted by Contractor for payment for the Work performed and completed in accordance with this Agreement. Owner may appoint a new representative at any time upon written notice to Contractor.

**2.1.1.1.** Owner's Representative shall communicate with Subcontractors through Contractor.

#### **2.1.2. Fees, Assessments and Easements**

**2.1.2.1.** Owner shall obtain and pay for necessary fees, approvals or assessments required for the use and occupancy of the Project. Such fees, approvals or assessments shall include zoning regulation fees, impact fees, utility connection fees, environmental impact fees, and health and environmental permits and fees.

**2.1.2.2.** Owner shall acquire and pay for any easements required for the construction of permanent structures on the Project Site.

#### **2.1.3. Owner Provided Information and Services**

**2.1.3.1.** To the extent such third party documents are not included in the Contract Documents, Owner shall provide Contractor with surveys describing the physical characteristics, legal limitations, and utility locations of and on the Project Site. Contractor shall be entitled to rely on the accuracy of information contained in the third party documents; however, Contractor shall not hold Owner liable or responsible for any errors, omissions, conflicts or discrepancies in such information. Upon discovery of any such error, omission or inconsistency, Contractor shall promptly notify Owner of same requesting direction thereon.

**2.1.3.2.** Upon written request by and with reasonable notice from Contractor, Owner shall promptly provide Contractor with any information or services required of Owner by the Contract Documents. Upon written request by Contractor for additional information or services needed during performance of the Work or in accordance with ¶ 1.3.4 above, Owner shall, with reasonable promptness, respond to such request; provided however that such request is necessary to Contractor's performance of the Work and such response is within Owner's authority or control.

## **2.2. NOTICE OF COMMENCEMENT**

**2.2.1.** Owner shall prepare for Contractor's recordation in the Public Records of the county in which the Project is located the Notice of Commencement (the "NOC"). Prior to the first date of commencement, Contractor shall ensure the NOC is recorded in the public records of the county where the project is located. In the event the effective date of the recorded NOC will run prior to completion of the Work, Contractor shall upon expiration of the NOC timely re-record the NOC for a period necessary to complete the Project. Alternatively, prior to Owner's preparation of the NOC, Contractor may require Owner to state in the NOC an effective date that anticipates the total duration of the Project. In the event Contractor completes the Work prior to the effective date, Contractor shall record in the Public Records a Notice of Termination of Commencement.

**2.2.2.** At the time of the initial recording of the NOC Contractor shall ensure that any Payment and Performance bond securing the Project is attached to and recorded with the NOC.

## **2.3. OWNER'S RIGHT TO SUSPEND THE WORK**

Owner may upon written order to Contractor suspend the Work, or any portion thereof, at any time in the event Contractor (1) fails to correct any portion of the Work Owner or Owner identifies as inconsistent with the Contract Documents or (2) persistently fails to execute or supervise the Work. Owner's right of suspension shall be for the period of time required by Contractor to eliminate or correct the cause for such order. Owner, however, may not exercise this right for the purposes of coordinating work or services with vendors or third parties in direct contract with Owner.

## **2.4. EXTENT OF OWNER'S RIGHTS**

**2.4.1.** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and do not limit in any way the rights granted to Owner in the Contract Documents or permitted by Owner at law or in equity.

**2.4.2.** Notwithstanding any authority or right granted to Owner in the Contract Documents, in no event shall Owner have control over, charge of, or any responsibility for construction means, methods, techniques sequences or procedures or for safety precaution and programs in connection with the Work.

## **ARTICLE 3 CONTRACTOR**

### **3.1 GENERAL**

#### **3.1.1. Contractor's Representatives**

Contractor shall appoint a Project Manager and a Project Superintendent to actively manage the Project and supervise all aspects of the Work. The persons so designated will be approved by Owner prior to commencement of the Work if not identified in the Agreement between Owner and Contractor. Contractor's representatives shall be fully acquainted with the Project Site, the Contract Documents, and the Work. Unless otherwise identified in the Agreement, the Project Manager (or a corporate officer) shall be authorized to act on Contractor's behalf and bind Contractor with respect to the Work and shall be authorized to execute written Change Orders in accordance with the terms set forth in Article 10 below.

**3.1.1.1.** Contractor's Representatives shall have previous experience with projects similar in size and nature to the Project and for a period of time that would reasonably be required to manage, inspect, and

execute the Project.

**3.1.1.2.** Project Manager shall be authorized to review and approve recommendations on all requests submitted by Owner relating to the Work. Further, Project Manager shall frequently, but at least once per week, inspect the Project and shall be available for meetings with Owner as requested. Project Manager shall document all site visits and meetings with Owner or Subcontractors and shall maintain minutes or notes of such meetings, which shall be copied to Owner and attached to the Project's daily activity report.

**3.1.1.3.** Project Superintendent shall be a full-time employee exclusively dedicated to the Project and at the Project Site daily during the performance of the Work and available to meet with Owner as necessary to discuss any aspect of the Work. Project Superintendent shall maintain a daily activity report typically used by Contractor that details, without limitation, weather conditions, number and classification of Contractor's employees, Subcontractors present identifying the number of laborers performing thereunder, materials delivered to the Project Site, Work completed and a description thereof, and generally all activities occurring on the Project Site. Upon Owner's request, Project Superintendent shall either copy or make available to Owner Contractor's daily activity report.

**3.1.1.4.** On or before three (3) days after meeting or communicating with Owner, either Project Manager or Project Superintendent shall document and confirm in writing any decisions made therein.

**3.1.1.5.** Contractor shall not substitute or replace either Project Manager or Project Superintendent without the prior written consent of Owner, which shall not be unreasonably withheld. At any time during the performance of the Work, Owner may request that Contractor remove and replace Contractor's Project Manager or Project Superintendent, or any other member of Contractor's Staff.

**3.1.2.** While performing under the Agreement or during the course of pursuing other contracts with Owner, Contractor shall maintain business ethics standards, which are aimed at avoiding any real or apparent impropriety or conflicts of interest, which could be construed to have an adverse impact on the dealings with Owner.

**3.1.2.1.** In accordance with the foregoing, Contractor shall take reasonable actions to prevent any actions or conditions, which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of Contractor's employees, agents, subcontractors, etc., in their dealings and relations with Owner's current and former employees and their relatives. For example, Contractor's employees, agents, or Subcontractors or their employees should not give or offer any gift, entertainment, payments, loans, or other considerations to Owner's representatives, employees or their relatives.

**3.1.3.** Upon Owner's request prior to execution of the Agreement or on or before three (3) days after the Date of Commencement, Contractor shall furnish Owner with a logistical plan of its staging of the Work and anticipated needs for reasonable and occasional storage of materials, and other related activities on Owner's property. Such plan shall be approved by Owner and may be revised as necessary with Owner's reasonable review and approval.

**3.1.4.** The duties, obligations and responsibilities of Contractor as set forth in this Article 3 are in addition to, and not in lieu of, other duties, obligations and responsibilities of Contractor enumerated elsewhere in these General Conditions or other portions of the Contract Documents.

**3.1.5.** Nothing in the Agreement or these General Conditions shall be deemed or construed to (1) make Contractor the agent, servant, or employee of Owner or (2) create any partnership, joint venture, or other association between Owner and Contractor.

## **3.2. REVIEW OF CONTRACT DOCUMENTS AND VERIFICATION OF FIELD CONDITIONS**

**3.2.1.** Contractor shall, using Commercially Reasonable Efforts, continuously throughout the performance of the Work, carefully study and compare the Contract Documents and immediately report in writing to Owner and Architect any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or variance

with physical conditions on the Project Site, including any problem which may preclude or inhibit proper performance of the Work or of a complete building system with the required characteristics of that system. Owner shall thereafter give appropriate written instructions to Contractor, and such instructions shall be final.

**3.2.2.** Contractor shall review all surfaces and completed work by other entities onto which subsequent Work will be applied. Contractor shall immediately notify Owner in writing of any known defects or conditions which may have a detrimental effect on Contractor's finished Work.

**3.2.3.** Should Contractor fail to report in writing an error, inconsistency, discrepancy, ambiguity, or omission in the Contract Documents, either known or discoverable in the exercise of Commercially Reasonable Efforts, or having reported the same, fail to wait for Owner's instructions as required prior to proceeding with the Work, then any Work performed by or on behalf of Contractor shall be at Contractor's own risk and expense, and Contractor shall be liable for all damages and corrective action resulting therefrom. Further, any defective work performed by or on behalf of Contractor, directly or indirectly, as a result of an undiscovered error, inconsistency, discrepancy, ambiguity, or omission in the Contract Documents which Contractor should have discovered by carefully studying and reviewing the Contract Documents shall be at Contractor's own risk and expense, and Contractor shall be liable for all damages and corrective action resulting therefrom.

**3.2.4.** Contractor shall be solely responsible for locating all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipe lines, buried telephone cables, existing foundations, and underground tanks and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, pipe lines, structures, tanks and services.

### **3.3. SUPERVISION AND PERFORMANCE OF THE WORK**

**3.3.1.** Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, for safety precautions and programs, and for coordinating all portions and aspects of the Work.

**3.3.2.** Contractor shall supply a sufficient number of representatives working under the direction and authority of Project Superintendent to ensure the Work progresses in accordance with the Project Schedule. At all times while Work is being performed, at least one such representative shall be on site.

**3.3.3.** Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors and other persons carrying out the Work. Contractor shall not permit employment of unfit Subcontractors, persons or persons not skilled in tasks assigned to them. Owner shall have the right to require Contractor to remove any person or entity for which Owner has a reasonable objection.

**3.3.4.** Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Owner or Architect in their administration of the Agreement or by inspections, tests or approvals required or performed under ¶ 3.8 by persons or entities other than Contractor.

**3.3.5.** Contractor shall be responsible to Owner for all acts and omissions of Contractor's employees, Subcontractors, Subcontractor's subcontractors, other persons or entities retained by Contractor, their agents and employees, and any other persons or entities performing any portion of the Work for or on behalf of Contractor or Subcontractors and will ensure that such parties strictly adhere to the requirements of the Contact Documents and Applicable Laws.

**3.3.6.** Any direction or instruction from Owner to Contractor regarding the Work will relate only to the results Owner desires to obtain from the Work and will in no way (1) affect Contractor's independent contractor status, or (2) be construed as Owner's direction regarding means or methods of construction.

**3.3.7.** During all stages of the Work, Contractor shall maintain on the Project Site a record set of as-built documents ("record drawings"), for all disciplines of the Work. The record drawings shall show the Work as actually installed as well as all field changes affecting the general construction, mechanical, electrical, plumbing and all other aspects of the Work. Contractor shall update the record set as the Work or each field change occurs.

Contractor shall make the record drawings on a set of prints of the Drawings. Contractor shall provide Owner with record drawings as required by ¶ 9.2.2.1 below.

**3.3.8.** On a daily basis, Contractor shall keep the Site and surrounding areas free from accumulation of waste materials or rubbish and free from all debris, building materials, and equipment likely to cause an unsafe condition. Further, Contractor shall remove all spillage arising from the performance of the Work and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon the Work. In the event Contractor repeatedly fails to keep the Project Site clean and free from unsafe conditions, Owner may, upon twenty-four (24) hours written notice to Contractor, employ its own forces to do so and thereafter offset the cost of same in Contractor's upcoming Application for Payment.

**3.3.9.** Contractor shall perform the Work in such manner so as to preserve all manufacturers' warranties that will pass to Owner upon final payment to Contractor.

**3.3.10.** Upon Owner's notice, Contractor shall enforce Owner's reasonable requirements with respect to noise and parking on or near the Project Site.

### **3.4. COMPLYING WITH APPLICABLE LAWS**

**3.4.1.** Contractor shall be responsible for giving all notices and for complying with all Applicable Laws, including (without limitation) applying for and scheduling all necessary permits (including, without limitation temporary certificates of occupancy), licenses, and inspections required by Owner or governmental authorities. If Contractor performs any aspect of the Work that is contrary to Applicable Laws, Contractor shall assume responsibility for correction of such aspect of the Work and shall bear the costs, losses and expenses attributable to correction. Any changes in Applicable Laws requiring additional work beyond Contractor's present scope of Work may be subject to a Change Order.

**3.4.2.** Contractor shall be responsible for performing and executing the Work in accordance with Applicable Laws to the extent that the use of commercially reasonable efforts would impute such knowledge.

**3.4.3.** When Contractor knowingly performs Work that is contrary to Applicable Laws without such notice to Owner, Contractor shall assume appropriate responsibility for such work and shall bear the related costs and expense attributable to correction of same.

### **3.5. PERMITS AND FEES**

**3.5.1.** If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed in such a manner and time as to maintain the Project Schedule.

**3.5.2.** Contractor shall secure and pay for all governmental fees, permits, and licenses for the complete performance of the Work. Such fees, permits, and licenses shall include, without limitation, plan review fees, permits for building, mechanical, electrical (including low voltage and fire alarm), plumbing, and fire protection systems.

### **3.6. SUBSTANTIAL COMPLETION; PROJECT SCHEDULE**

**3.6.1.** Contractor shall achieve Substantial Completion of the entire Work within the Contract Time and within time frame set forth in the Project Schedule, subject only to adjustments as documented by Change Order. In order to achieve Substantial Completion, all remaining Work, after satisfying the conditions in the foregoing list, must be minor in nature so that Owner or its agents, contractors, invitees, or tenants can reasonably use and occupy the Project for its intended use and completion of any Punch-list Items required by Owner shall not result in any undue interference with such use and occupancy. Substantial Completion shall require without limitation, that:

1. All systems and parts are functional;

2. All utilities are connected and operating normally;
3. The Project is accessible by normal vehicular and pedestrian traffic routes;
4. Contractor has obtained either a partial or final Certificate of Occupancy from the governing authority with jurisdiction over the Project, if necessary; and.
5. Contractor has complied with the close-out procedures in section 01 77 00 of the Specifications.

**3.6.2.** Contractor shall update the Project Schedule every thirty (30) days and submit such update to Owner with Contractor's Applications for Payment. Each schedule update shall contain a comparison of actual progress with the current milestones established in the Project Schedule. If any schedule update sets forth an estimated date for Substantial Completion beyond the expiration of the Contract Time, Contractor shall furnish to Owner, for Owner's review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Project to ensure timely completion of the Project. To ensure such timely completion, Contractor shall take all reasonably necessary action including, without limitation, increasing the number of personnel and labor or equipment on the Project and implementing overtime and double shifts. In the event that the delay requiring such corrective action is due to the fault of Contractor, Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time on account thereof.

### **3.7. MATERIALS AND EQUIPMENT**

**3.7.1.** Contractor shall cause all materials and equipment that are Contractor's responsibility to be delivered to the Project Site in a manner that will assure the timely progress and completion of the Work. Owner shall cause all material and equipment that are Owner's responsibility, including materials and equipment provided by Owner's Separate Contractors, to be delivered to the Project Site in a manner that will assure the timely progress and completion of the Work. To meet this requirement, delivery of Owner materials and equipment shall be in coordination with Contractor to minimize disruption and maximize continuity of the progress of the Work. Contractor, however, will not unreasonably encumber the Project Site with material and equipment, in which case Owner may cause any or all materials or equipment to be relocated or removed from the Project Site at Contractor's cost and expense.

**3.7.2.** Contractor warrants to Owner that all materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents and Applicable Laws. Unless otherwise provided in the Contract Documents, materials must conform to the manufacturer's standards in effect on the date of installation and installed in strict accordance with manufacturer's directions and recommendations. Work not conforming to these requirements, including substitutions not approved in writing by Owner before installation, shall be deemed defective.

**3.7.3.** Upon Owner's request Contractor shall give, or shall require its suppliers or the manufacturers to give, full and accurate information in writing to Owner on any questions concerning the kind and quality, performance and/or delivery status of any materials and equipment, or such other data with respect thereto as may be requested by Owner, and shall obtain for Owner the written assurances of a manufacturer that its material and/or equipment is designed and appropriate for the use intended.

### **3.8. TESTING**

**3.8.1.** As required by the Contract Documents, Contractor shall obtain and pay for the necessary certificates of inspection, the testing of materials, or other such approvals. Contractor shall promptly forward to Owner copies of same upon receipt.

**3.8.2.** If the Contract Documents or the Applicable Laws require Contractor to have any portion of the Work inspected, tested or approved, Contractor shall advise Owner in a timely manner, and in writing if practicable, of its readiness and of the date arranged so that Owner may observe such inspection, testing or approval. Contractor shall bear all costs of such inspections, tests and approvals which is included in the Contract Sum; unless the Work is being performed under a cost-plus agreement, in which case the cost of inspection, testing or approval shall be

considered a cost of the Work.

**3.8.3.** If Owner determines that any Work requires special inspection, testing or approval which ¶ 3.8.2 does not include, Owner shall instruct Contractor to order such special inspection, testing or approval, and Contractor shall advise Owner as set forth above. If such special inspection or testing reveals a failure of the Work or the performance thereof to comply with the requirements of the Contract Documents and the Applicable Laws, Contractor shall bear all costs thereof, including costs to correct the Work to Owner's satisfaction and compensation for the additional engineering services made necessary by such failure, the latter of which, if incurred by Owner, may be offset by Owner against any amounts then or thereafter due to Contractor. If such special inspection or testing proves that the Work was performed properly, Owner shall bear the costs of such inspection or testing and costs to correct the Work.

### **3.9. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

#### **3.9.1. Definitions**

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

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

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

**3.9.2.** As required by the Contract Documents, Contractor shall prepare or obtain from Subcontractors and material suppliers Shop Drawings, Product Data, and Samples to demonstrate for those portions of the Work the method by which Contractor proposes to furnish missing details in the Drawings, to construct certain aspects of the Work, to order certain materials, finishes or colors, or to achieve certain aspects of the design intent expressed in the Contract Documents.

**3.9.2.1.** Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared.

**3.9.3.** In the event that a submittal requires the review of licensed engineer, 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.

**3.9.3.1.** When professional certification or performance criteria of material, systems, or equipment is required by the Contract Documents, Contractor shall provide the professional providing the certification with all information relevant to performance requirements, and the materials, systems, and equipment expected to operate in the Project. Contractor shall ensure that such certification shall be based on performance and operating conditions that generally prevail and are expected in the Project and at the Project Site.

**3.9.3.2.** Architect and Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**3.9.4.** Contractor shall review for compliance with the Contract Documents each Shop Drawing, Product Data, letter of intent for proprietary specifications, and Sample prior to submitting same to Owner and Architect, and Contractor shall do so as to not disrupt the sequence of the Work, affect the critical path of the Project Schedule, or delay the activities of Owner performing work under separate contracts.

**3.9.5.** Contractor's review and approval of Shop Drawings, Product Data, Samples and similar

submittals, represents that Contractor has verified the materials are as specified, has field verified dimensions affecting the submittal, and has otherwise coordinated the information contained within such submittals with the requirements of the Work, the Contract Documents and the design intent expressed therein. Contractor shall stamp and sign all Shop Drawings, Product Data, and samples with Contractor's review stamp. Unless the stamp indicates language to the effect that the drawings, data, or samples are "rejected" or "approved with comments," such Shop Drawings, Product Data, or Samples shall be deemed approved by Contractor.

**3.9.6.** Owner shall review submitted Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to determine whether such submittals conform to the design intent. Owner and shall approve, reject, or approve with comments and shall return to Contractor such submittals with reasonable promptness so as to not cause delay in the Work or disruption in Contractor's sequencing of the Work. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals reviewed by Architect or Owner.

**3.9.7.** Contractor shall not perform any portion of the Work for which the Contract Documents require review and approval of Shop Drawings, Product Data, or Samples or other similar submittal until such time the same has been approved by Owner.

### **3.10. ALLOWANCES**

**3.10.1.** Contractor shall include in the Contract Sum any portion of the Work or equipment identified as Allowances in the Agreement.

**3.10.2.** In the event Owner has identified Allowances the cost associated therewith, unless otherwise provided in the Agreement, shall include the cost of the materials or equipment delivered to the Project Site and all required taxes and permit fees associated therewith.

**3.10.3.** Contractor shall include in the Contract Sum, unless otherwise provided in the Agreement, all expenses associated with labor, installation, unloading, storing and handling equipment, Contractor's general conditions, overhead and profit.

### **3.11. PROJECT SAFETY**

**3.11.1.** Contractor shall be fully and solely responsible for all matters concerning safety of persons and property arising from performance of the Work. During the course of the Project, Contractor shall initiate, maintain, and supervise all safety programs in connection with the Work. Owner or any of Owner's representatives or employees shall assume any responsibility for the safety or protection of persons or property.

**3.11.2.** In addition to the requirement set forth above, when appropriate Contractor shall: (1) post appropriate signs concerning trespassing or the existence of danger and hazards and promulgating safety regulations; (2) furnish and maintain necessary traffic control barricades and flagman services; and (3) perform any other act necessary to ensure the safety of property and persons who enter the Project Site.

**3.11.3.** Contractor shall give written notices and comply with Applicable Laws bearing on safety of persons and property and their protection from damage, injury or loss.

**3.11.4.** Contractor, prior to commencing the Work, shall designate a responsible member of Contractor's organization whose duty shall be the prevention of accidents (the "safety representative"). Contractor's safety representative may be Contractor's designated Project Superintendent, and must meet the requirements of a "Competent Person" as defined in CFR 29 Part 1 1926.32F. The safety representative will be required to conduct safety meetings with its employees and with the safety representative designated by the Subcontractors before starting the Work.

**3.11.5.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and give Owner reasonable advance written notice. All such use and



storage shall be in strict compliance with Applicable Laws and the requirements of the insurance companies issuing policies in accordance with the Contract Documents.

### **3.12. PROTECTION OF THE WORK AND THE PROJECT**

**3.12.1.** Until such time as Owner occupies the Project, Contractor, at Contractor's expense, shall be responsible for initiating and maintaining control of the Project Site and for providing protection from vandalism and theft of the Work, materials, equipment, whether that of Contractor's, Subcontractor's, Owner's or Owner's vendor or separate contractor. Contractor shall obtain a specific endorsement to its CGL policy to cover this obligation.

**3.12.2.** Contractor shall be liable for the repair and replacement of any Work vandalized or stolen, regardless of whether Owner has already paid Contractor for such Work.

**3.12.3.** Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, Subcontractors, other personnel on the Project Site or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable except for damage or loss directly attributable to acts or omissions of Owner or by anyone for whose acts or omissions Owner may be directly liable, and not attributable to the fault or negligence of Contractor.

**3.12.4.** In the event Owner requires use of its existing facilities at the Project Site, Contractor shall schedule and perform the Work to provide protection and temporary facilities necessary to permit occupancy of the existing facilities.

### **3.13. HAZARDOUS MATERIALS**

**3.13.1.** Contractor acknowledges that Contractor, Subcontractor, or any other person performing the Work may encounter certain hazardous materials or substances on the Project, including but not limited to asbestos or polychlorinated biphenyl (PCB). In such event, Contractor shall immediately stop those portions of the Work in the affected area and report the condition in writing to Owner and Architect. Contractor shall suspend the Work, as set forth herein until such time as Contractor has received instructions from Owner on how to proceed with that portion of the affected Work. When the condition has been rendered harmless, Owner shall execute a written notice to Contractor to proceed with the Work affected and the Contract Time and Contract Sum may be, as determined by Owner, equitably adjusted.

**3.13.2.** To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused solely by the gross negligent acts or omissions of Owner, anyone directly or indirectly employed by Owner or anyone for whose acts Owner may be liable, but not to the extent caused or exacerbated by Contractor's failure to promptly comply with the requirements of ¶ 3.13.1, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this ¶ 3.13. In no event, however, shall Owner have any responsibility for any substance or material that is brought to the Project Site by Contractor, Subcontractor, any material supplier or any entity for whom any of them is responsible.

### **3.14. DOCUMENTATION TO BE SUBMITTED TO OWNER**

**3.14.1** Upon Owner's request, Contractor shall furnish or otherwise make available to Owner the following information:

1. Purchase Order information:
  - a) Full copies of all Purchase Orders with attachments, etc.

- b) Copies of Purchase Order proposals for successful and unsuccessful suppliers. Also include copy of bid tabulation if prepared.
  - c) Full copies of all Purchase Order change notices with related correspondence, detailed estimating take-off sheets in a form satisfactory to Owner, change notice price proposals, etc.
- 2.** Payroll information:
- a) Information of actual wage and/or salary rates should be submitted to Owner for approval in advance. Cost reimbursement will be subject to such approvals subject to audit verification of actual wages paid.
  - b) Daily time reports, time cards, time sheets, foremen reports or other similar documents which document the hours worked by an individual at the Project Site. Such information should have a brief description of the work performed (a cost code notation, etc.) to document how the individual's time was spent during the day. These should be prepared daily and submitted at the beginning of the next business day. These should be approved by an appropriate foreman and superintendent. Reimbursable supervisors' personnel time reports should be approved by Project Manager.
  - c) Certified payroll listings and/or the related payroll registers documenting the actual wages paid to the individuals charged to the Project. This information should be reconcilable to the payroll cost charged to the Project.
  - d) Computations of the labor burden chargeable to the Project in accordance with the contract subject to audit verification of actual costs.
- 3.** Contractor owned equipment rental information:
- a) Copies of daily equipment usage reports documenting how the equipment was used and the number of hours used in the execution of the Work at the Project. This information should be submitted daily for major pieces of equipment (and at least weekly for all other pieces of equipment) and should be reconcilable to Contractor's charges for equipment rental.
  - b) Information supporting the original purchase price and/or the fair market value, of each piece of equipment at the time it was committed to the Project. Contractor should submit requested equipment rental rates (hourly, daily, weekly, and/or monthly) for advance review and written approval by Owner before any items are committed to the Project. Added items should go through the same advance Owner review and approval process with respect to value and rates subject to verification of accuracy of equipment information represented as well as the accuracy of rental rates assigned. Contractor shall maintain an inventory of all rented and/or purchased equipment which is used on the Project. For purchased items, the inventory should describe the piece of equipment and the seller, note the date the piece of equipment was purchased, the purchase price, the condition of the equipment, etc. For rented items, the inventory should describe the piece of equipment was initially rented and the date the piece of equipment was returned to the lessor. A copy of this inventory should be furnished to Owner monthly.
- 4.** Other Cost support information:
- a) Copies of all miscellaneous general conditions invoices for supplies, materials, equipment rental, etc. Such invoices should include a reference showing that the cost was incurred for the Project and should show approval via requisition, etc. and receipt of goods or services where applicable.
  - b) Copies of information supporting any insurance and/or bond coverage chargeable to the Project in accordance with the Agreement. Insurance certificates should be forwarded when the insurance coverage takes affect. Owner may request copies of insurance policies, premium notices, correspondence with insurance company, special endorsements insurance company audit information, dividend information, etc.
  - c) Summary of Costs billed during a stated period:
  - d) Contractor should submit a listing, of all reimbursable Project costs incurred as of the last cut-off date (such as month-end). This listing of reimbursable Project costs incurred should be supported by invoices and/or the cost substantiation described above. Such information should be provided in computer readable format, etc. downloaded to data

- disk, etc.
- e) Copies of payroll related information (such as employee time sheets, payroll registers, etc.) and labor burden supporting documentation from Subcontractors and/or Sub-subcontractors to evaluate the accuracy of change order pricing and/or to verify the accuracy of time and material charges.

ARTICLE 4  
SUBCONTRACTORS

**4.1 GENERAL**

**4.1.1.** Nothing contained in the Contract Documents shall create or be construed to establish any contractual relationship between Owner and Subcontractor.

**4.1.2.** Upon Owner's request, Contractor shall provide Owner with (1) copies of the subcontract agreements (defined below) with all applicable attachments; (2) copies of subcontract proposals, with bid tabulations if prepared, from successful bidders and unsuccessful bidders; and (3) copies of all subcontract change orders with related correspondence, change order price proposals and supporting quantity takeoffs detailing by Drawing number the quantity of material additions or deletions and the price per unit of materials and related labor hours involved, including estimated actual labor cost per hour and the estimated actual cost of labor burden as defined in Article 10.

**4.1.3.** Except under the circumstances set forth below, Contractor shall not substitute or replace a Subcontractor without Owner's prior written consent.

**4.2. AWARD OF SUBCONTRACTS**

**4.2.1.** Prior to awarding any subcontract, Contractor shall notify Owner in writing of the names and of all subcontractors proposed for the several parts of the Work. Contractor also shall advise Owner whether, and to what extent, Contractor or Subcontractor has any financial interest in the other. No Subcontractor shall be engaged if objected to by Owner.

**4.2.2.** Owner shall not be liable to Contractor in any manner arising out of Owner's objection to a proposed Subcontractor. Any work performed on behalf of Contractor by a Subcontractor to whom Owner has objected shall be at Contractor's risk.

**4.3. REQUIREMENT OF SUBCONTRACTS**

**4.3.1.** For any part of the Work performed by a Subcontractor, Contractor shall execute a written agreement between Contractor and the Subcontractor that requires the Subcontractor to (1) perform the Work in accordance with the requirements of the Contract Documents and Applicable Laws and (2) assume towards Contractor for Subcontractor's Scope of Work all the obligations and responsibilities pursuant to the Contract Documents which Contractor assumes to Owner, including, without limitation, (a) indemnification for the benefit of Owner and Owner's representative; (b) insurance and bonding; (c) project safety; (d) protection of the Work; (e) general terms of payment; (f) lien waivers and releases from sub-subcontractors and material suppliers; (g) Owner and Project confidentiality; and (h) Change Order procedures and pricing.

**4.3.2.** Each subcontract agreement shall provide for its termination by Contractor if, in Owner's opinion, Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to its work; and each Subcontractor shall be required to insert a similar provision in each of its subcontract agreements.

**4.3.3.** Contractor assigns to Owner all its interests in all agreements with Subcontractors, including (without limitation) all purchase orders now existing or later entered into for performance of any aspect of the Work, which assignment shall be effective only upon Owner's termination of the Agreement due to Contractor's default and upon acceptance by Owner in writing, but only as to those agreements that Owner designates in writing; provided, however, that all sums due and owing by Contractor to such designated Subcontractors for any Work

performed or materials supplied before such assignment shall remain the sole responsibility of Contractor. It is specifically agreed between Owner and Contractor that such assignment is part of Owner's consideration for entering into this Agreement.

ARTICLE 5  
THE ARCHITECT

**5.1 CONSTRUCTION ADMINISTRATION SERVICES**

**5.1.1.** Owner's Representative or Architect for the Project identified in the Agreement will provide administration of the Agreement in accordance with and to the extent identified in the agreement between Architect and Owner, which shall be available to Contractor upon request.

**5.1.2.** Owner's decision with respect to interpretations of the Contract Documents and design intent shall be final. In such event, Contractor shall promptly proceed with the Work pursuant to Owner's decision, subject to the Dispute Resolution procedures set forth in ¶ 15.2

**5.1.3.** Upon written notice to Contractor, Owner, in Owner's sole discretion, may terminate Architect, in whole or in part, and either appoint a new Architect or assume certain duties and obligations in respect to construction administration of the Project.

**5.1.4.** In the event the date of Substantial Completion is delayed more than thirty (30) days for reasons that would not provide Contractor with an extension of the Contract Time, Contractor shall be responsible for any fees and expense incurred by Owner to extend Architect's contract administration services.

ARTICLE 6  
TIME FOR PERFORMANCE

**6.1 GENERAL**

**6.1.1.** With respect to the Contract Time, as defined in the Agreement, and achieving Substantial Completion of the Work, time is of the essence.

**6.1.2.** Contractor shall commence the Work on the date of commencement and shall perform the Work diligently, expeditiously and with adequate resources as to complete all Work within the Contract Time.

**6.2. DELAYS IN THE WORK**

**6.2.1.** Under the Contract Documents, "*Force Majeure* Events" mean (1) fire or other physical destruction including lightning, explosion, flood, earthquake, hurricane, storms or other severe action of the elements, riots, civil commotion, protests, demonstrations or other similar acts outside of Contractor's control; (2) strikes, lockouts and/or labor disputes (excluding any such disputes of Contractor's work force); or (3) a change of Applicable Law which actually results in the need for additional time within which to complete the Work; provided that such occurrence is not the fault or negligence of Contractor or could not have been avoided by Contractor's exercise of Commercially Reasonable Efforts. Owner may, subject to ¶ 6.4 below, if applicable, grant Contractor a day-for-day adjustment in the Contract Time due to any *Force Majeure* Event; provided, however, that such extensions of the Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or which are otherwise the responsibilities of Contractor. Any extension of the Contract Time due to a *Force Majeure* Event must be documented by Change Order as set forth in Article 10.

**6.2.2.** Contractor shall not be entitled to additional compensation, overtime, extended field or home office overhead or other damages from Owner for delays, disruptions, hindrance, constructive acceleration or other schedule and work force impacts. No extension or adjustment of the Contract Time shall be allowed for the following:

1. Events which were caused by Contractor's fault or negligence, by a sub-contractor's fault or negligence, or any other event which is the responsibility of Contractor or its sub-contractors or suppliers;
2. Delays which are concurrent with other unexcused delays;
3. Delays which do not affect the critical path of construction;
4. Delays for which Contractor has failed to request additional time or has failed to submit a request document within seventy-two (72) hours of its occurrence;
5. Failure of Contractor to provide sufficient manpower, materials, facilities and equipment;
6. Failure of Contractor to reschedule activities, work weekends, increase equipment or other actions to complete the Work within the Project Schedule; or
7. Delays for Rain Days.

**6.2.2.1.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT TO THE CONTRARY, AN EXTENSION OF THE CONTRACT TIME SHALL BE THE SOLE REMEDY OF CONTRACTOR FOR ANY (A) DELAY IN THE COMMENCEMENT, PROSECUTION, OR COMPLETION OF THE WORK; (B) HINDRANCE OR OBSTRUCTION IN THE PERFORMANCE OF THE WORK; (C) LOSS OF PRODUCTIVITY, OR (D) OTHER SIMILAR CLAIM (COLLECTIVELY, "DELAYS") WHETHER OR NOT SUCH DELAYS ARE FORESEEABLE. IN NO EVENT SHALL CONTRACTOR BE ENTITLED TO ANY COMPENSATION OR RECOVERY OF ANY DAMAGES IN CONNECTION WITH ANY DELAY, INCLUDING (WITHOUT LIMITATION) CONSEQUENTIAL DAMAGES, LOST OPPORTUNITY COSTS, OR IMPACT DAMAGES.

**6.2.3.** In the event any portion of this Article 6 is determined by a court of competent jurisdiction to be unenforceable under the circumstances, Contractor shall in no event be entitled to recover damages for extended home office overhead, idle labor and equipment, lost profit on other projects, lost bonding capacity, or any consequential damages. Notwithstanding anything to the contrary, Contractor shall be entitled to make a claim for adjustment to the Contract Time and/or the Contract Sum to the extent delays are caused by Owner, Owner's Separate Contractors or any other person or entity for whom Owner is responsible, including claims relating to the following: (i) timeliness and/or completeness of providing clarifications; and (ii) timeliness and/or accuracy of Owner provided equipment, materials or work. Claims relating to time, including claims for an increase in the Contract Sum, shall be made in accordance with Section 15. Owner may reject the claims, at Owner's sole discretion, and deny the adjustment of the Contract Time and/or the Contract Sum.

### **6.3. ACCELERATION OF THE WORK; EXTENSION OF CONTRACT TIME**

**6.3.1.** In the event Owner determines that the performance of the Work is not meeting the milestones identified in the Project Schedule, Owner shall have the right to order Contractor, at Contractor's sole expense, to accelerate the progress of construction by and without limitation: (1) scheduling additional shifts or overtime in which to perform the Work; (2) supplying additional manpower, equipment and facilities; or (3) requiring similar measures (collectively "Corrective Measures"). Contractor shall employ Corrective Measures until such time Owner is satisfied that the Work is progressing in accordance with the Project Schedule. Owner's right to order Corrective Measures is solely for the purpose of insuring Contractor's compliance with the Project Schedule. In no event shall Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequence of procedures, or for safety precautions and programs in connection with the Work, notwithstanding the rights and authority granted in this subparagraph or elsewhere in the Contract Documents.

**6.3.2.** Owner may, in its sole discretion and for any reason other than that provided above, require Contractor to accelerate the schedule of performance by providing overtime, weekend and/or holiday work and/or by having all or any Subcontractors designated by Owner provide overtime.

**6.3.2.1.** In the event Contractor or Subcontractors provide overtime, weekend or holiday work pursuant to Owner's request in ¶ 6.3.2, above, Owner shall reimburse Contractor for the direct cost to Contractor and Subcontractors for the premium time for all labor provided (but not for the straight time costs of such labor), together with any Social Security and State or Federal unemployment insurance taxes in connection with such premium time. Contractor, however, shall not be entitled to additional overhead,

supervision costs, commissions, profit or expenses incurred from such work.

**6.3.2.2.** When labor is provided pursuant to ¶ 6.3.2, Contractor shall submit to Owner the applicable daily activity reports on the duly authenticated time tickets evidencing the activities and hours worked.

**6.3.3.** Owner may grant Contractor an extension of Contract Time due to delays caused by the acts or omissions of Owner or Architect, or their respective employees or agents, or by *Force Majeure* Events, or by some other condition beyond the control of Contractor and which Contractor could not reasonably have foreseen; provided that such delay affects the critical path of the Project Schedule, which Contractor shall be required to establish as a condition precedent to any Change Order increasing the Contract Time.

**6.3.4.** Claims for extension of Contract Time shall be made as set forth in Articles 10 and 15 below.

## **6.4. LIQUIDATED DAMAGES**

**6.4.1.** To the extent any liquidated damages are provided for in the Agreement, Owner may deduct any liquidated damages due hereunder from any final payments due Contractor. Until any liquidated damages are paid to Owner, Owner will be entitled to receive interest at the rate set forth in the Agreement. If liquidated damages are actually recovered by Owner, the above-stated liquidated damages will be Owner's exclusive damage remedy for Contractor's failure to achieve Substantial Completion on or before the date of Substantial Completion, but such remedy will in no way limit or preclude Owner's rights, entitlements and remedies under the Agreement for damages sustained, other than for delay, for which Contractor may be responsible pursuant to the terms of this Agreement or Applicable Laws.

**6.4.2.** If for any reason the liquidated damages as set forth herein are unenforceable, Owner shall be entitled to receive all damages sustained as a result of Contractor's failure to achieve Substantial Completion on or before the last day of the Contract Time.

## ARTICLE 7 VENDOR AND SEPARATE CONTRACTS WITH OWNER

### **7.1 GENERAL**

**7.1.1.** Owner reserves the right to enter into other contracts ("Separate Contracts") with vendors or other third party contractors ("Separate Contractors"), in connection with performing work or furnishing equipment to the Project or on the Project Site. Owner may exercise this right on any terms and conditions which Owner may from time to time determine in its sole discretion.

**7.1.2.** Owner shall notify Contractor within a reasonable time that Owner has entered into Separate Contracts so as to assist Contractor in sequencing and scheduling the Work. In the event that work performed under Separate Contracts affects the Work in any way, Contractor shall give Owner ample notice as to when Owner should schedule the performance of such separate work.

### **7.2. COORDINATION OF SEPARATE WORK BY CONTRACTOR**

**7.2.1.** Contractor shall permit Separate Contractors, and Owner, reasonable opportunity for the introduction and storage of their materials and equipment, as well as reasonable opportunity and access to perform their work. Contractor shall connect and coordinate the Work with such Separate Contractor's work performed under Separate Contracts.

**7.2.2.** If the performance or completion of any part of the Work depends upon work performed under Separate Contracts, Contractor shall, prior to proceeding with the Work, inspect and promptly report to Owner, in writing, any apparent discrepancies or defects in such work of Separate Contractor that may or would prevent Contractor's proper performance of the Work.

**7.2.3.** Contractor's failure to properly inspect and advise Owner shall be deemed Contractor's acceptance of the work performed under Separate Contract as proper and acceptable to receive the Work; except, however, as to defects which may exist in Separate Contractors' work after completion of the Work and which Contractor could not have discovered by Contractor's inspection prior to completion of the Work.

**7.2.4.** In the event Contractor causes damage to work or property of Owner or Separate Contractor, or delays Owner's work being performed under Separate Contract, Contractor shall be liable to Owner or Separate Contractor for any such delay claim and shall indemnify Owner as set forth herein. In the event that Separate Contractor causes damage to Contractor's Work, then the Contract Sum and the Contract Time may be equitably adjusted, as determined solely by the Owner.

### **7.3. DAMAGE BY SEPARATE CONTRACTORS; CLEAN-UP**

**7.3.1.** In the event Owner's Separate Contractors causes damage to the Work or to Contractor's property, or causes delay or interference with the Project Schedule, Contractor shall present Contractor's claim for damage to the separate contractor and shall attempt in good faith and with reasonable efforts, to settle such claim with Separate Contractor prior to initiating the dispute resolution procedures as set forth herein.

**7.3.2.** If a dispute arises between Contractor and any Separate Contractor as to the responsibility for keeping the Project clean and free from waste or for final cleaning, Owner may take such action and allocate the cost between the parties as Owner deems just and reasonable.

## **ARTICLE 8 PROGRESS PAYMENTS**

### **8.1 SCHEDULE OF VALUES**

**8.1.1.** Unless Owner requires Contractor to include as an Exhibit to the Agreement, Contractor shall submit to Owner, on or before three (3) days after the Date of Commencement, a schedule of values allocating the entire Contract Sum to various portions of the Work. The schedule of values shall be the basis for Owner's review of Contractor's Applications for Payment.

### **8.2. APPLICATIONS FOR PAYMENT; TIME OF PAYMENT AND RETAINAGE**

**8.2.1.** Contractor shall meet with Owner to review monthly billing on or before the twenty-fifth (25<sup>th</sup>) day of each calendar month, at which time Contractor shall submit to Owner two (2) original notarized Applications for Payment in accordance with the schedule of values for completed Work and materials suitably stored on-site through and including the last day of the same month. The Application for Payment shall be substantially similar to Exhibit D, or otherwise as approved by Owner.

**8.2.2.** As a condition precedent to Owner's payment, each Application for Payment shall include:

- 1.** All documentation supporting Contractor's right to payment for the amount requested;
- 2.** Contractor's conditional partial waiver and release of lien and affidavit for the current period the period of the Application for Payment in accordance with Exhibit C, attached hereto;
- 3.** Contractor's unconditional partial waiver and release of lien and affidavit current through the previous period of Application for Payment in accordance with Exhibit A, attached hereto; and
- 4.** A partial waiver and release of lien, drafted in accordance with Chapter 713 of the Florida Statutes, from each and every Subcontractor, sub-subcontractor and material supplier who has furnished labor, services or materials to the Project or has otherwise requested payment from Contractor during the period.

**8.2.3.** For Stipulated Lump Sum and GMP Agreements, the amount of each Application for Payment shall be computed as the sum of multiplying each line item from the schedule of values by the percentage of that

portion of the Work completed, less retainage of ten percent (10%) or otherwise agreed pursuant to ¶ 8.2.6, plus that portion of the schedule of values properly allocable to materials and equipment delivered and suitably stored on the Project Site, less the aggregate of previous payments made by Owner; and less any amount withheld by Owner pursuant to ¶ 8.2.5.

**8.2.4.** Provided Owner receives Contractor's Application for Payment on the twenty-fifth (25<sup>th</sup>) day of the month, Owner shall make payment to Contractor no later than the fifteenth (15<sup>th</sup>) day of the following month. If an Application for Payment is received by Owner after the first (1<sup>st</sup>) day of the month, payment shall be made by Owner no later than twenty (20) days after receipt.

**8.2.5.** Owner reserves the right to withhold, as an extraordinary reserve and without limiting its other rights and remedies hereunder, an amount sufficient: (1) to correct defective work not remedied; (2) to defend, satisfy and discharge any asserted claim that Contractor (or anyone providing Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work; (3) to repair damage to the Work or to any other work on the Project caused by Contractor; (4) to complete the Work if it appears that funds remaining under the Agreement, including retainage and exclusive of back charges, are insufficient to complete the Work; (5) to reimburse Owner for any back-charges incurred as a result of any act or omission by Contractor hereunder; (6) to protect Owner from the possible consequences of any other breach or default by Contractor hereunder; (7) to secure Owner with respect to any breach or default by Contractor or its affiliates, parent company and subsidiaries under any other agreement; or (8) to reimburse a separate contractor (defined below) for damage to same or work performed thereby.

**8.2.6.** On the first Application for Payment wherein the total Work completed is greater than 50% and the progress of the Work meets or exceeds the current Project Schedule, Owner may, upon Contractor's request, decrease the amount of retainage as required to withhold five percent (5%) of the Contract Sum. At no time, however, shall the amount held in retainage be less than five percent (5%), in which case Owner shall withhold such amount, as set forth in ¶ 8.2.5, to achieve this requirement.

**8.2.7.** In the event Contractor and Owner dispute the amount due under an Application for Payment, Owner shall pay Contractor the amount which it does not dispute, at which time either party may pursue dispute resolution procedures as defined in ¶ 15.2 below.

### **8.3. GENERAL TERMS OF PAYMENT**

**8.3.1.** When an Application for Payment includes materials stored on-site, but not yet incorporated in the Work, Contractor shall attach to the Application for Payment a complete description of such materials. Unless previously approved by Owner, Contractor shall not request payment for materials stored off-site.

**8.3.2.** Contractor shall pay Subcontractors and suppliers all amounts approved by Owner in each Certificate for Payment within seven (7) days after receiving payment from Owner on account of corresponding Work furnished by Subcontractors or suppliers, unless Owner approves of such withholding in writing.

**8.3.3.** Neither progress payments nor Final Payment shall constitute acceptance by Owner of Work in place or stored materials, nor shall progress payments be construed as a waiver of any right or claim by Owner regarding such Work or stored materials. Further, Owner approval of an Application for Payment shall not be deemed a representation by Owner that Owner (1) has made exhaustive or continuous on-site inspection to verify the quality or quantity of the Work; (2) has reviewed or accepted the construction means, methods, techniques sequences of the Work; or (3) has agreed to Contractor's safety procedures or program employed in performance of the Work.

**8.3.4.** In lieu of paying Contractor, Owner may make payments directly to any person or entity furnishing labor, services or materials to the Project, and the amounts paid shall be credited against the Contract Sum. Contractor shall cooperate with Owner to facilitate any such direct payment and shall provide such evidence as Owner may request for purposes of making direct payments.

### **8.4. DISCOUNTS, REBATES AND REFUNDS**



**8.4.1.** Contractor shall apprise Owner of all discounts, rebates and refunds available to Owner in connection with Contractor's payment to Subcontractors and material suppliers. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner, provided Owner funds in time for Contractor to take advantage of any such cash discounts, and Contractor shall make provisions so that Owner may avail itself to such savings.

**8.4.2.** Contractor shall provide a credit to the Contract Sum for all insurance policy discounts, rebates, refunds or dividends, and a portion of any volume rebates or free material credits earned with the purchase of materials or services associated with the Work.

## **8.5. DISCHARGE OF LIENS**

**8.5.1.** Contractor, during the performance of the Work and within 135 days after Final Completion of Work, shall keep the Project and the lands upon which it is situated free from all construction and other liens by reason of the Work or any labor, materials, services or other things used therein. In the event a claim of lien is recorded against the Project, Contractor shall, on or before fourteen (14) days after the date Contractor is notified of such claim of lien, file in the Public Records a Notice of Bond pursuant to § 713.23, *Fla. Stat.* (2005), if applicable, or will remove the Lien by transferring the Lien to a security or otherwise. If Contractor fails to comply with the foregoing, Owner may, without limiting its remedies, retain sufficient funds to pay the same and all costs incurred by reason thereof. Contractor shall pay all reasonable attorneys' fees and expenses incurred as necessary to release or transfer said Liens. In the event Owner must discharge or remove a Lien that is recorded after the date of Final Completion but before 135 days thereafter, Contractor shall reimburse Owner for all such costs in accordance with this paragraph. To the fullest extent permitted by Applicable Laws, Contractor will indemnify, defend, and hold harmless Owner from all claims, losses, demands, or causes of action of whatever nature arising out of any such Lien. Contractor shall ensure that Owner never be required to make any payments that would be deemed "improper payments" under the provisions of the Construction Lien Law, Chapter 713 of the Florida Statutes.

## ARTICLE 9 FINAL PAYMENT

### **9.1 OWNER'S PUNCH LIST**

**9.1.1.** Not less than seven (7) days prior to the date upon which Contractor anticipates achieving Substantial Completion, Owner will inspect the Work and prepare a Punch List identifying any aspect of the Work that is, without limitation, defective, incomplete, or generally not in compliance with the Contract Documents. Owner's failure to include any item on the Punch List shall not relieve Contractor from Contractor's responsibility to complete or correct the Work in accordance with the Contract Documents.

**9.1.2.** Upon receiving Owner's Punch List, Contractor shall promptly and diligently address each Punch List Item, performing the Work in such a manner as to not inhibit or disturb Owner's partial occupancy of the Project, if applicable. If necessary, and at Owner's sole discretion, Contractor shall perform Punch List Work before or after business hours. On or before the date upon which Contractor achieves Substantial Completion, Contractor shall complete all of the Punch List Items, unless relieved of same by Owner.

**9.1.3.** During performance of the Punch List Work, Contractor may submit an Application for Payment pursuant to ¶ 8.2 above. In such Application for Payment, Owner may retain an amount equivalent to One Hundred and Fifty percent (150%) of the reasonable value of the Punch List Work that remains outstanding. If Contractor fails to complete the Punch List work within the time specified by Owner, Owner shall have the right to exercise its remedies in ¶ 12.4 or assess liquidated damages for failure to complete pursuant to ¶ 4.4.1 of the Agreement.

### **9.2. CONDITIONS OF FINAL PAYMENT**

**9.2.1.** On or before five (5) days before the date on which Contractor completes the last of the Punch List Work, Contractor may submit to Owner Contractor's Final Payment Application for the balance of the Contract Sum plus retainage withheld during the previous Applications for Payment.

**9.2.2.** As an express condition precedent to final payment, Contractor shall furnish to Owner:

1. Two (2) sets of record drawings for all disciplines of the Work;
2. A final set of approved Shop Drawings and Product Data;
3. All warranty documents evidencing Owner is the beneficiary of same;
4. All operations and maintenance manuals for all major items and building systems in the Project
5. All extra materials specified in the Contract Documents for Owner's future use;
6. Evidence that the Project has received a final cleaning such that Owner may occupy the Project without further work;
7. Evidence that the Project site has been fully cleaned and restored, including without limitation, removal of all excess materials, rock, sand, paving, and miscellaneous debris;
8. Evidence that all construction equipment, trailers, materials, and machinery have been removed from the Project Site;
9. Evidence that all temporary utilities have been disconnected;
10. Contractor's Final Affidavit in a form meeting the requirements of Chapter 713 of the Florida Statutes;
11. A final unconditional waiver and release of lien from each Subcontractor, sub-subcontractor, material supplier, equipment supplier, and laborer who has served a notice to owner or otherwise established potential lien rights against the Project or a potential claim against Owner or the Project in the amount for which each has requested payment from Contractor for any labor, materials, or services furnished to the Project;
12. Contractor's unconditional final waiver and release of lien and affidavit in accordance with Exhibit 2, attached hereto;
13. Consent of Surety, if any, to final payment;
14. Any governmental certificates required by the Contract Documents or otherwise to evidence compliance with the Work and Applicable Laws and the right to occupy the Project for its intended purpose;
15. Proof of continuing insurance coverage as set forth herein; and
16. A computation of Post Project Cost Review, pursuant to ¶ 3.14.

**9.2.3.** The date on which Contractor has fulfilled its obligations set forth in ¶ 9.2.2 above shall be deemed the date of Final Completion. On or before thirty (30) days after the date Final Completion, Owner shall make final payment to Contractor.

**9.2.4.** Owner's final payment to Contractor shall not constitute a waiver of claims by Owner for unsettled liens or claims, failure of the Work to comply with the Contract Documents, terms of guarantees or warranties in these General Conditions, or unknown conditions or information concerning the Work; and Contractor's acceptance of final payment shall constitute a waiver of all claims against Owner by Contractor, Subcontractors, sub-subcontractors, or material suppliers, to the extent that the same are not listed in Contractor's Final Affidavit.

ARTICLE 10  
CHANGES IN THE WORK

**10.1 GENERAL**

**10.1.1.** Contractor shall incorporate the provisions of this Article 10 into all agreements with lower tier Contractors, Subcontractors, material suppliers, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including stipulated sum (or fixed price contracts), unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.

**10.1.2.** Except for defects associated with the Work performed pursuant to a Change Order, a Change Order executed by Contractor and Owner shall constitute a final settlement on all matters relating to a change in the

Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change.

## **10.2. CHANGE ORDER PROCEDURES**

### **10.2.1. Owner Directed Change Orders**

**10.2.1.1.** At any time during Contractor's performance of the Work, Owner may increase or decrease the scope of Work without nullifying the Agreement by submitting to Contractor a Construction Change Directive. Upon Contractor's receipt of the Construction Change Directive, Contractor shall submit to Owner within seven (7) days a Change Order proposal as set forth below, itemizing in sufficient detail for review, the work and estimating any increase or decrease in the Contract Sum or Contract Time as the result of the change.

**10.2.1.2.** Contractor's proposals for changes in the Contract Sum or Contract Time shall be submitted within seven (7) calendar days of Owner's request, unless Owner extends such period due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, Owner may direct Contractor to proceed with the changes without waiting for Contractor's proposal or for the formal Change Order to be issued. In the case of an unacceptable Contractor proposal, Owner may direct Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to Contractor by Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) days. The cost or credit, and/or time extensions, will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Agreement.

### **10.2.2. Contractor Requested Change Orders**

**10.2.2.1.** Owner and Contractor intend the Contract Documents to be all inclusive of the work required and work incidental for completion of the Work for the Contract Sum. Notwithstanding the forgoing, in the event Changes to the Work are required due to insufficiency of design or code requirements, Contractor shall be entitled to submit a proposed Change Order. On or before seven (7) days after the date on which the event necessitating the proposed Change Order occurred or when Contractor knew or should have known that a change in the Work would be necessary, Contractor shall submit to Owner a proposed Change Order as set forth herein. Contractor's failure to submit a proposed Change Order within such time shall be deemed a waiver of Contractor's right to claim any adjustment in Contract Time or Contract Sum associated with such change.

**10.2.2.2.** In Contractor's proposed Change Order, Contractor shall indicate in its proposal (1) the scope of the change; (2) the reason for the change; (3) the party, if any, whose acts or omissions Contractor believes resulted in the proposed change; and (4) a definitive statement of fees due Contractor for services and expenses related to such change.

**10.2.3.** Any increase or decrease in the Contract Sum or Contract Time shall be documented by Change Order, executed by Owner, and until such time shall not be enforceable or included in any Payment Application made by Contractor. Change Orders for increases in Contract Time shall be valid and reasonable only if requested in accordance with ¶¶ 10.2.1.1 and 10.2.1.2 and if the work of the Change Order affects the critical path of the Project Schedule.

**10.2.4.** If Owner disputes the validity or amount of a proposed Change Order, but nevertheless directs Contractor to proceed, Contractor shall promptly proceed with the work and expeditiously complete such work under the Change Order pending resolution of the dispute pursuant to ¶ 15.2. Likewise, Owner shall include payment for proposed Change Order work in accordance with ¶ 8.2.7.

## **10.3. PRICING PROVISIONS**

**10.3.1.** Whenever a Change Order proposal to adjust the Contract Sum or Contract Time is approved,

Owner shall have the right to select Contractor's method of pricing in accordance with the Pricing Provisions found in this ¶ 10.3. The options will be (1) a lump sum change order proposal or (2) a cost plus change order proposal as defined herein below. To the extent Unit Prices are identified in the Agreement, Contractor shall use such amounts to price the Change Order.

**10.3.2. Lump Sum.** Contractor shall submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. Owner will require itemized Change Orders and Contractor Pricing Certifications on all Change Order proposals from Contractor, Subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials and labor quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

**10.3.3. Cost Plus.** As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, Owner may elect to have extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, Contractor shall perform such authorized extra work at actual cost for direct labor (working foreman, journeyman, apprentices, helpers, etc.); actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foreman, or the cost or rental of small tools, minor equipment or expendables, plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change proposals as outlined above. Owner and Contractor may agree in advance in writing on a maximum price of this work and Owner shall not be liable for any charge in excess of the maximum. Daily timesheets with names of all Contractor's employees working on the project will be required to be submitted to Owner for both labor and equipment used by Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by Contractor's employees showing the Work as well as extra work performed by each employee.

#### **10.4. METHOD OF PRICING**

**10.4.1. Labor.** Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by Contractor for those workers or crews of workers who Contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order work. Supervision above the level of working foremen (such as general foreman, superintendent, project manager, etc.) is considered to be included in the agreed upon markup percentages between Owner and Contractor.

**10.4.2. Labor Burden.** Labor Burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience, modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool cost, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price Change Orders will be examined at the conclusion of the project and an adjustment to the approved Change Orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.

**10.4.3. Material.** Estimated material Change Order costs shall reflect Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to Contractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for Change Order work shall be credited to Owner if Contractor is provided Owner funds in time for Contractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot Pricing" quotations will not be considered sufficient substantiating detail.

**10.4.4. Equipment.** Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order work (defined as tools and equipment with an individual purchase cost of more than \$500). For Contractor owned equipment the "bare" equipment rental rates allowed to be used for pricing Change Order proposals shall be 75% of the monthly rate listed in the most current publication of the AID Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the Change Order work. Further, for Contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any Change Order work shall be limited to 50% of the fair market value of the piece of equipment when the first Change Order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the Change Order work.

**10.4.5. Sales and Use Tax.** Sales and use tax (if applicable) shall not be subject to any markup percentage fee. Any sales or use tax properly payable by Contractor shall be added after computing the Change Order amount before tax.

**10.4.6. Direct and Indirect Cost Covered by Markup Percentages.** As a further clarification, any agreed upon markup percentage fee must be approved by Owner, and, if approved, will be intended to cover Contractor's profit and all indirect costs associated with the Change Order work. Items intended to be covered by the markup percentage fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foreman, estimating, engineering, coordination, expediting, purchasing, detailing, legal, accounting, data processing or other administrative expenses, Shop Drawings, permits, comprehensive general liability insurance, auto insurance and umbrella insurance. The cost for use of small tools is also to be considered covered by the markup percentage fee. Small tools shall be defined as tools and equipment (power and non-power) with an individual purchase cost of less than \$500. All material changes must be approved by Owner.

**10.4.7. Deduct Change Orders and Net Deduct Change Orders.** In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.

**10.4.8. Contingency.** In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated for completion of the Work. Unknowns attributable to material scrap and waste will be estimated as part of material cost.

**10.4.9. Liability Insurance and Bonds.** In the event Contractor has been required to furnish comprehensive general liability and/or performance and/or payment bonds as part of the base contract price, a Change Order may be processed, at Owner's sole discretion, to account for Contractor's net increase or decrease in insurance cost and/or bond premium costs associated with Change Orders to Contractor's base Contract Sum. Contract adjustments related to any such increased or decreased cost related to insurance and/or bond coverage will not be subject to any Contractor markup for overhead and profit.

ARTICLE 11  
WARRANTIES

**11.1 GENERAL**

**11.1.1.** Contractor warrants to Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that the Work shall conform, in all aspects, to the requirements of the Contract Documents. Upon Owner's request, Contractor shall furnish satisfactory written evidence as to the kind and quality of any material or equipment incorporated in the Work.

**11.1.2.** Work not conforming to the Contract Documents or performed in accordance with these General Conditions shall be deemed defective and not subject to the warranty limitations set forth herein.

**11.1.3.** Contractor shall not warrant Work that has been damaged due to Owner's improper or insufficient maintenance, improper operations, or normal and customary use and occupancy of the Project.

**11.1.4.** Upon Final Completion, Contractor shall assign to Owner all manufacturers' warranties relating to materials and labor used in the Work.

## **11.2. WARRANTY PERIOD**

**11.2.1.** Contractor shall warrant and guarantee the Work and performance thereof for a period of one (1) year from the date of Substantial Completion, unless a longer period is specified in the Contract Documents, provided by the manufacturer, or required by Applicable Laws.

**11.2.2.** Equipment and building systems, such as HVAC, fire alarm, intercom or other low voltage systems, elevators, and similar items shall be required to have a trouble free operation period of not less than sixty (60) days from the date of Substantial Completion before the warranty period begins. Upon completion of the initial sixty (60) day trouble free period, the effective warranty date shall be retroactive to the date of Substantial Completion. Should the item being warranted not be trouble free during the initial sixty (60) day operational period, the effective commencement of the warranty period for such item(s) shall be adjusted to be sixty (60) days from the achievement of any subsequent sixty (60) day trouble free period of operation.

## **11.3. TIME OF WARRANTY REPAIRS; EMERGENCIES**

**11.3.1.** In the event of failure of any portion or aspect of the Work, Owner shall notify Contractor in writing of such failure and the damage resulting therefrom, if any. On or before ten (10) days after the date on which Owner notifies Contractor, Contractor shall commence the warranty work necessary to correct the failed Work and shall, notwithstanding any waiver to the contrary, repair at Contractor's sole cost and expense, any damages that may have resulted therefrom.

**11.3.2.** Failure of the Work that affects the habitability, safety, use of the Project, any portion of the building, or which includes roof repairs or water leaks, shall be deemed emergency work requiring immediate repair. Owner shall notify Contractor upon becoming aware of circumstances requiring emergency work. Within one (1) hour of contacting Contractor, Contractor shall commence or cause a third party to commence the necessary repairs to the Work. If Owner, in its sole discretion, determines that the emergency work requires immediate attention, Owner may commence the necessary repair work. Upon correction of the circumstances requiring emergency work to Owner's satisfaction, Contractor, notwithstanding any waiver to the contrary, shall promptly repair at Contractor's sole cost and expense, any damages to the Work that may have resulted from defects in the Work.

**11.3.3.** In the event Owner is required to commence and/or complete repair work required to be performed by Contractor, Contractor shall reimburse Owner for all costs and expenses associated therewith.

**11.3.4.** During the warranty period, Contractor shall be responsible for emergency repairs as indicated herein. If Contractor is unable or unwilling to respond immediately to make emergency repairs upon conditions that Owner may determine to be an emergency situation, Owner reserves the right, and Contractor recognizes such right, to make such emergency repair and then to bill and hold Contractor liable for same.

## **ARTICLE 12**

### **UNCOVERING AND CORRECTING THE WORK; OWNER'S RIGHT TO PERFORM**

#### **12.1 UNCOVERING WORK**

**12.1.1.** If any portion of the Work should be covered contrary to the request of Owner or the requirements of Applicable Laws or the Contract Documents, Contractor shall, upon Owner's demand, uncover the Work in question for Owner's or inspector's inspection. After inspection, Contractor at its sole cost and expense, shall replace or repair the Work, along with any damage resulting therefrom.

## **12.2. CORRECTING THE WORK**

**12.2.1.** Owner shall have the authority to reject any portion of the Work that fails to comply with the Contract Documents. At such time, Contractor shall promptly correct the Work identified by Owner, whether observed before or after the Work has been performed or after Substantial Completion.

**12.2.2.** In the event that corrective work is on the critical path of the Project Schedule, or if such work would disturb the occupants of the Project during normal business hours, Contractor shall perform the corrective work at times suitable to Owner, whether it be during nights, weekends or holidays.

**12.2.3.** When, after Final Completion of the Project but before the applicable statutory period prescribed by Applicable Laws, Owner discovers Work that fails to comply with the Contract Documents, Owner shall notify Contractor of such non-conforming work and Contractor shall respond in the time frame as set forth in ¶ 11.3 above.

**12.2.4.** In the event Contractor or any Subcontractors damage any work performed by Owner under separate contract while uncovering or repairing the Work, Contractor shall bear the costs and expense associated repairing or replacing work performed by Separate Contractors. In the event a Separate Contractor damages any of the Contractor's Work, such Separate Contractor shall bear the costs and expense associated with repairing or replacing Contractor's Work.

## **12.3. ACCEPTANCE OF NON-CONFORMING WORK**

**12.3.1.** Owner may, in its sole discretion, accept any non-conforming Work instead of requiring Contractor to remove and correct the same. Upon Owner's election of this right and notification to Contractor, Owner may, in accordance with ¶ 8.2.5 above, offset an appropriate amount against a forthcoming Application for Payment, or if there is not then any monies owed to Contractor, Contractor shall, upon Owner's demand pay Owner the appropriate amount or difference after the offset.

## **12.4. OWNER'S RIGHT TO PERFORM WORK**

**12.4.1.** In the event Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provisions of the Agreement, and such default, neglect or non-performance shall continue for a period of seven (7) days after written notification thereof from Owner in which Contractor fails to undertake in good faith remedial measures within said period and thereafter proceed diligently to completion, then Owner may, without prejudice to any other remedy and without further notice perform the remedial work. At such time, Owner shall have the right to take possession of such portion of the Project as will enable Owner to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, and construction equipment located on the Project Site.

**12.4.2.** In the event and within Owner's reasonable discretion, conditions exist that would pose imminent harm to persons or property or has impact on our business, Owner may perform remedial work as set forth in ¶ 12.4.1 without providing Contractor with notification and an opportunity to cure.

**12.4.3.** If Owner takes action as set forth in this ¶ 12.4, Contractor shall be liable for all costs and expenses, including but not limited to architect or engineering fees, associated therewith and Owner may offset such amount in a forthcoming Payment Application as provided in ¶ 8.2.5. If, however, the amounts then or thereafter due to Contractor are not sufficient to cover such costs, then Contractor shall, upon demand, pay the difference to Owner.

## **ARTICLE 13 INSURANCE**

### **13.1 REQUIREMENTS**

**13.1.1.** Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance in the limits required under the Contract

Documents for:

1. Protection from claims under workmens' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the Work itself;
2. Damage to property or injury to third parties which may arise out of or result from Contractor's operations under the Contract Documents, whether such operations be by Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them, including, without limitation, hazard insurance;
3. Protection to property and the Work pursuant to ¶ 3.12, herein above;
4. Builder's risk, except for remodeling projects when requested by Owner; and
5. Comprehensive General Liability Insurance, including completed operations coverage.

**13.1.2.** Prior to the commencement of the Work, Contractor shall provide Owner with original certificates of insurance. For "occurrence" policies Contractor's insurance coverage shall be maintained for a period of not less than two (2) years after the date of Final Completion.

**13.1.3.** Owner reserves the right to approve Contractor's underwriter and form of insurance policies, which approval shall not be unreasonably withheld. Owner shall be named as an additional insured on all of Contractor's insurance policies listed in the Agreement. Contractor shall use its best efforts to obtain such additional insurance in such amounts and with such companies as Owner may reasonably request at Owner's cost and expense. All such policies and certificates of insurance shall contain a restriction prohibiting the cancellation or modification of such policies without at least thirty (30) days written notice to Owner and Owner's lender.

**13.1.4.** In the event any claim shall be filed against Contractor having the effect of reducing the amount of coverage, Owner may request, at Contractor's expense, an increase in coverage to offset any such reduction. If Owner is damaged by the failure of Contractor to maintain such insurance as required by this Article 13 or the Agreement, Contractor shall bear all reasonable costs (including, but not limited to attorneys' fees and expenses) properly attributable to such failure.

**13.1.5.** Contractor shall ensure that the General Liability and Workers Compensation Policy contains a waiver of subrogation in favor of Owner. All policies, except Workers Compensation, shall be primary and non-contributory. Worker's Compensation coverage shall have an "All States" endorsement.

## **13.2. INSURANCE COVERAGE**

**13.2.1.** Contractor shall provide insurance coverage in amounts not less than the limits set forth in the Agreement.

## **ARTICLE 14 PAYMENT AND PERFORMANCE BONDS**

### **14.1 GENERAL**

**14.1.1.** If required by the Contract Documents, Contractor shall obtain unconditional Payment and Performance bonds covering faithful performance of the Agreement and Contractor's payment obligations arising thereunder.

**14.1.2.** At all times during Contractor's performance under this Agreement, any Payment and Performance bonds shall be in an amount equal to the Contract Sum and should be increased to include all change orders executed during performance of the Work.

**14.1.3.** Contractor shall record any Payment and Performance bond as set forth in ¶ 2.2. In the event Contractor fails to do so, Contractor shall furnish a copy of the bond to any requesting party appearing to be a potential beneficiary under the bond.



**14.1.4.** All bonds signed by an agent shall be accompanied by a certified copy of such agent's authority to act.

## **14.2. REQUIREMENTS**

**14.2.1.** The Payment and Performance bond shall (1) meet all statutory requirements of § 713.23 of the Florida Statutes; (2) be written by surety licensed in the State of Florida with a Best's rating of A/XII or better; (3) contain a multiple obligee rider; (4) stipulate that no modification or waiver of the terms of the Agreement or the Contract Documents by either Owner or Contractor will in any manner discharge or limit any surety liability; (5) provide for payment of liquidated damages and payment of the cost for the recovery of delay to the Project; (6) name Owner and Owner's construction lender, if applicable, as an additional obligee on these bonds; and (7) remain in effect for a period not less than two (2) years following the date of Substantial Completion or the date on which payment of any disputed amount is resolved, which ever is later.

**14.2.2.** Contractor shall keep the surety informed of the progress of the Work and where necessary, obtain the surety's consent to, or waiver of (1) notice of changes in the Work; (2) request for reduction or release of retainage; (3) request for final payment; and (4) and any other material required by the surety.

**14.2.3.** The bonds must (1) state the surety's bond number; (2) include the surety's agreement to waive notice of any addition, alteration, omission, change or other modification of the Agreement or the Contract Documents; (3) include surety's obligation under the Bonds to Owner's successors and assigns; and (4) specifically incorporate the Agreement and these General Conditions.

**14.2.4.** Contractor shall at all times comply with the requirements and requests of each surety. Contractor shall copy Owner on all correspondence and communications between Contractor and the surety, and Owner may, at any time, inform the surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

**14.2.5.** Owner may, at its sole discretion and at any time, require Contractor to obtain additional Performance and Payment bonds for any Subcontractor whose subcontract sum exceeds One Hundred Thousand Dollars (\$100,000.00), the cost of which bond shall be reimbursed by Owner.

## ARTICLE 15 CLAIMS AND DISPUTES

### **15.1 EXTENSION OF CONTRACT TIME; CHANGE IN CONTRACT SUM**

**15.1.1.** In the event Contractor or Owner wishes to make claim for an increase or decrease in the Contract Time or Contract Sum, such claim shall be made, in writing, by the claiming party to the other on or before fourteen (14) days after the date on which (1) the occurrence of the event giving rise to such claim or, (2) the claiming party first recognizes or reasonably should have recognized the condition giving rise to the claim, whichever is later. Any claim for an increase or decrease in the Contract Time or Contract Sum shall include sufficient details and documentation to permit evaluation by the non-claiming party.

**15.1.2.** A party who fails to request a claim in the manner and within the time as set forth herein shall be deemed to have waived its right to request or receive an adjustment in the Contract Time or Contract Sum. A change in the Contract Time or Contract Sum shall only be made by Change Order in accordance with Article 10 and this Article 15, and under no circumstances shall Owner have any liability for increases in Contract Time or Contract Sum until timely receipt of such written notice and execution of a Change Order. In the event that Contractor and Owner are unable to agree upon the entitlement to a change in the Contract Time or Contract Sum, the parties shall execute a Change Order for the undisputed number of days or for the undisputed amount. Thereafter, the claiming party may seek to resolve their differences pursuant to the dispute resolution procedures set forth in ¶ 15.2 below.

**15.1.3.** When Contractor presents a claim for an increase in either the Contract Time or the Contract Sum, Owner may audit Contractor's books and records (financial or otherwise) relating to the Project, as set forth in ¶

18.2. Contractor shall make such books and records available within three (3) days following Owner's request (excluding weekends and holidays), failing which Contractors' claim shall be deemed waived and Contractor shall have no recourse, in law or equity, for such claim.

## **15.2. DISPUTE RESOLUTION**

**15.2.1.** In the event of any dispute, claim, question, or disagreement arising from or relating to the Work, the Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If the parties do not reach an amicable resolution within a period of thirty (30) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be attempted to be resolved by mediation.

**15.2.2.** The parties expressly agree, subject to the mutual agreement of a mediator skilled in construction law, that mediation shall occur on or before sixty (60) days after the date on which either Contractor or Owner serves its request. Mediation, however, shall not be a condition precedent to litigation.

**15.2.3.** If the disputes, claims, questions, or disagreement cannot be settled by negotiation, Contractor and Owner agree that mediation shall occur in the location where the Work is being performed. In the event Contractor and Owner are unable to completely resolve any dispute, claim, question, or difference through mediation, Contractor and Owner agree that unless the dispute, claim, question, or difference arises or relates to issues affecting title to the property on which the Project lies, jurisdiction and venue for any litigation shall be in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida.

**15.2.4. Contractor and Owner expressly waive their right to a trial by jury for all claims and counterclaims.**

## **15.3. CONTINUED PROGRESS OF THE WORK**

**15.3.1.** Notwithstanding the fact that a dispute, claim, question, or disagreement may have arisen between Contractor and Owner during the course of the Work relating to the execution or progress of the Work, the interpretation of the Contract Documents, an Application for Payment, the delivery of materials, or any other matter whatsoever, Contractor shall not be relieved of its obligations under the Agreement pending the determination of such dispute, claim, question, or disagreement.

## **ARTICLE 16 INDEMNIFICATION**

### **16.1 CONTRACTOR'S OBLIGATION**

**16.1.1.** Contractor hereby agrees as follows:

- to indemnify, defend and hold Owner harmless from any loss, liability, claim or lawsuit arising from any injury or damage resulting from the condition of any product, service or item supplied to Owner by Contractor, except to the extent that the condition was caused solely by the negligence of Owner.
- to indemnify, defend and hold Owner harmless from any loss, liability, claim or lawsuit arising from any product or advertisements, labels, configurations, point of purchase displays, and other items supplied to Owner by Contractor, except to the extent provided or modified by Owner that implicates or infringes upon a copyright, slogan, trademark, trade dress, patent, right of privacy, right of publicity, name, likeness, or any other potential intellectual property right, including but not limited to rights arising under common law and statutory unfair competition laws.
- to indemnify, defend and hold Owner harmless from any claim, suit, liability or loss arising in any manner out of the presence, services or other activities of any of Contractor's employees, agents or contractors or out of the performance, use or operation of Contractor's products or equipment, except to the extent such incident, occurrence or damage giving rise to the claim, suit, liability or

loss was caused solely by the negligence of Owner.

The obligation to defend Owner stated herein is hereby deemed a separate and distinct obligation, fully severable from any other duty stated herein. Contractor's duty to indemnify Owner under this agreement attaches to all products, services or items supplied to Owner by Contractor and will not terminate with the termination of this agreement. This indemnification shall be deemed part of the Project specifications and to fully comply with § 725.06, *Florida Statutes* (2006), including any amendments thereto, in all respects.

**16.1.2.** Contractor's obligation to indemnify Owner under this Article shall survive the completion or the termination of this Agreement.

## **16.2. OTHER RIGHTS**

The obligations described in this Article 16 shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person indemnified pursuant to this Agreement.

## **16.3. BENEFITS PAYABLE**

In any and all claims against Owner, or any of its agents or employees by any employee of Contractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Article 16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmens' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 17

### SUSPENSION OF WORK; TERMINATION OF THE AGREEMENT

## **17.1 SUSPENSION OF WORK**

**17.1.1.** Upon three (3) days written notice to Contractor, Owner may suspend, delay, or interrupt any portion of the Work for a period not to exceed sixty (60) days from the effective date of suspension. Contractor shall continue to perform any part of the Work not suspended, delayed, or interrupted. Provided that the Work which is suspended, delayed, or interrupted affects the critical path of the Project Schedule, Owner may approve a Change Order for an extension of Contract Time. Contractor, however, shall not be entitled to a Change Order increasing the Contract Sum.

## **17.2. TERMINATION FOR CONVENIENCE**

**17.2.1.** Upon seven (7) days written notice to Contractor, Owner may, without cause and without breach or prejudice to any other right or remedy, elect to terminate the Agreement for convenience. In such case, Contractor shall be paid, without duplication of any items for:

- 1.** Completed and accepted Work executed in accordance with the Contract Documents prior to the effective date of termination based upon: (a) the unit price for said work, or, if none, (b) the scheduled value of said work, or, if none, (c) the actual and necessary cost of the work together with Contractor's current rate for overhead and profit; and
- 2.** Actual expenses incurred or paid to Subcontractors and suppliers prior to and including the effective date of termination in performing services and furnishing labor, material, services or equipment as required by the Contract Documents in connection with uncompleted Work, plus Contractor's current rate for overhead and profit on such expenses.

**17.2.2.** Contractor shall not be paid on account of loss of anticipated profits or revenue, lost bonding capacity or any other economic losses arising out of or resulting from Owner's termination for convenience.

## **17.3. TERMINATION FOR CAUSE BY OWNER**

**17.3.1.** Upon seven (7) days written notice to Contractor and the surety during which time Contractor fails to cure the cause stated by Owner for termination, Owner may terminate the Agreement, without prejudice to any other right or remedy available to Owner, for any one of the following reasons:

1. Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of Contractor's insolvency;
2. Contractor refuses or fails, or is unable for any reason, to make prompt payment to Subcontractors or for material or labor;
3. Contractor persistently fails to supply ample labor to the Project and the Project is more than thirty (30) days delayed;
4. Contractor should disregard any Applicable Laws or the instructions of Owner or Architect or Engineer of record; or
5. Contractor should otherwise be responsible of a violation of, or in default under, any provision of the Agreement.

**17.3.2.** On or before fourteen (14) days after the effective date of termination, Owner shall advise Contractor as to which subcontract agreements Owner shall assume pursuant to ¶ 4.3.3.

**17.3.3.** If in any subsequent determination Owner's termination for cause is declared to be wrongful, such termination shall automatically convert to a termination for convenience under ¶ 17.2.

**17.3.4.** If the Agreement is terminated pursuant to ¶ 17.3, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon the completion of the Work, Owner shall make payment to Contractor, or Contractor shall reimburse Owner, as the case may be, as provided herein.

**17.3.5.** As an alternate remedy to Owner and without terminating the Agreement as a whole, Owner may, under any of the circumstances set forth above, terminate a portion of the Agreement and complete the portion of the Agreement so terminated in such manner as Owner may deem expedient, taking possession of such part of the Project Site and utilizing Contractor's materials, equipment, tools, and construction equipment as may be necessary to accomplish this remedy. Accordingly, Contractor shall grant to Owner the further right to receive an assignment of such subcontracts as Owner deems necessary and as set forth herein.

**17.3.5.1.** If a portion of the Agreement is terminated pursuant to ¶ 17.3.5, such termination shall not be treated as a reduction in the scope of the Work pursuant to Article 10. Rather, in such event, Owner shall offset against any monies then or thereafter due to Contractor an amount determined by Owner to be adequate to cover all costs and expenses it will incur in performing, or causing to be performed, the portion of the Agreement so terminated.

#### **17.4. TERMINATION FOR CAUSE BY CONTRACTOR**

**17.4.1.** Provided that Contractor is not in breach of the Agreement and through no act or fault of Contractor, Contractor may suspend the Work or terminate the Agreement if (1) the Work is stopped for a period of ninety (90) consecutive days, (2) the governing authority having jurisdiction over the project issues an order which requires all Work to be stopped for a period of ninety (90) consecutive days; or (3) upon fourteen (14) days written notice, Owner fails or refuses to make any payment to Contractor for a period of thirty (30) days after the date on which payment is due and Owner is in breach of ¶ 8.2.7.

**17.4.2.** In the event it is determined that Contractor has terminated the Agreement for cause, Contractor shall be entitled to payment as set forth in ¶ 17.2.1 above.

#### ARTICLE 18 MISCELLANEOUS PROVISIONS

## **18.1 MODIFICATION AND WAIVER**

**18.1.1.** The provisions of the Agreement or these General Conditions shall not be amended, modified, varied or waived in any respect except by a writing signed by Owner. Contractor expressly acknowledges that no person has authority to orally waive, or release Contractor from, any of Contractor's duties or obligations arising under the Contract Documents.

**18.1.2.** No waiver by Owner or Contractor of any breach of any term, provision or condition contained in the Contract Documents, or the failure to insist upon strict performance thereof shall be deemed to be a waiver of such term, provision or condition as to any subsequent breach thereof or a waiver of any other term, provision or condition contained in the Contract Documents. The exercise of any right or remedy hereunder shall not be deemed to preclude or affect the exercise of any other right or remedy provided herein.

## **18.2. AUDITING PROJECT RECORDS**

**18.2.1.** Contractor's records shall be subject to audit and such records shall include but not be limited to accounting records, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends and any other Contractor records which may have a bearing on matters of interest to Owner in connection with Contractor's work for Owner, all of foregoing hereinafter referred to as "records" shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

1. Contractor's compliance with the terms of the Agreement;
2. Compliance with Owner's business ethics policies; and
3. Compliance with provisions for pricing change orders, invoices or claims submitted by Contractor or any of its payees.

**18.2.2.** Owner or its designee shall be entitled to audit all of Contractor's records for a period of three (3) years after final payment or longer if required by Applicable Laws.

## **18.3. NOTICE**

**18.3.1.** All notices required under the Contract Documents shall be deemed to be properly made if delivered in person, sent by overnight or certified mail, return receipt requested, or transmitted by electronic mail or facsimile accompanied by the facsimile transmission receipt, to the last business address or number known to the party receiving the notice. Notice shall be deemed effective three (3) days after the date on which it is sent or on the date on which it is actually received, whichever is earlier.

## **18.4. ATTORNEYS' FEES**

**18.4.1.** In the event that either party seeks to enforce this Agreement by way of legal action, and the matter is placed in the hands of an attorney, then the prevailing party shall recover its attorneys' fees (including expert and paralegal fees) and the Court shall determine the amount of such fees and allow recovery to said prevailing party in entering a judgment. The parties agree that entitlement to attorneys' fees shall include all appellate attorneys' fees and costs.

## **18.5. ASSIGNMENT**

**18.5.1.** Each party to this Agreement binds itself its successors, and assigns to the other party hereto with respect to all covenants, conditions and obligations contained in the Contract Documents. Neither Contractor nor

Owner shall assign this Agreement without the written consent of the other. Contractor acknowledges that Owner may collaterally assign this Agreement to lender, if applicable. In the event of such assignment, the Assignor shall continue to be liable for performance hereunder. This provision shall survive completion or termination of the Project.

**18.6. CHOICE OF LAW; SEVERABILITY**

**18.6.1.** The Agreement shall be governed by the laws of the State of Florida without regard to its provisions regarding conflict of laws.

**18.6.2.** In the event a court of competent jurisdiction holds any part, term, or provision of this Agreement unenforceable or in conflict with any applicable Florida law, the validity of the remaining terms or provisions shall not be affected thereby.

## EXHIBIT A

### WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

This waiver and release does not cover any retention for labor, services, or materials furnished after the date specified.

\* \* \* \* \*

### CONTRACTOR'S AFFIDAVIT UPON PROGRESS PAYMENT

Contractor hereby acknowledges and affirms that as of the date of this Release neither it nor its Subcontractors or suppliers have any claims for costs, losses, or damages, direct or indirect, for delay, disruption, interference, inefficiency, errors, omissions, conflicts or discrepancies, impacts, actual or constructive acceleration, or the like, including but not limited to, impact damages, stacking of trades, overtime, additional equipment rental, extended general conditions costs, extended field and home office overhead, or similar damages, arising out of the Work (or the Project) including additions thereto, except as to pending amounts due and owing under change orders that have been approved by Publix Super Markets, Inc. ("Owner") in writing pursuant to that certain Agreement for Construction Services between Owner and Contractor and except as specifically noted as follows:

(If left blank the Owner will assume there are none and is making payment in reliance on same.)

DATED on this \_\_\_\_ day, (insert year)

(insert name of Contractor)

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT B

### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$ \_\_\_\_\_ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(insert description of property)

\* \* \* \* \*

### CONTRACTOR'S AFFIDAVIT UPON FINAL PAYMENT

Contractor hereby acknowledges and affirms that as of the date of this Release neither it nor its subcontractors/suppliers have any claims for costs, losses, or damages, direct or indirect, for delay, disruption, interference, inefficiency, errors, omissions, conflicts or discrepancies, impacts, actual or constructive acceleration, or the like, including but not limited to, impact damages, stacking of trades, overtime, additional equipment rental, extended general conditions costs, extended field and home office overhead, or similar damages, arising out of the Work (or the Project) including additions thereto, except as to pending amounts due and owing under change orders that have been approved by Publix Super Markets, Inc. ("Owner") in writing pursuant to that certain Agreement for Construction Services between Owner and Contractor and except as specifically noted as follows:

(If left blank the Owner will assume there are none and is making payment in reliance on same.)

DATED on this \_\_\_\_ day, (insert year)

(insert name of Contractor)

By: \_\_\_\_\_

Its: \_\_\_\_\_



# EXHIBIT C

## CONDITIONAL WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

Upon receipt of the sum of \$\_\_\_\_\_, the undersigned Lienor hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(insert description of property)

**THIS CONDITIONAL WAIVER AND RELEASE OF LIEN ONLY COVERS CLAIMS FOR LABOR, SERVICES OR MATERIALS TO THE EXTENT THAT THE LIENOR HAS BEEN PAID FOR THE SAME. THIS CONDITIONAL WAIVER AND RELEASE DOES NOT PRECLUDE THE LIENOR FROM FILING A CLAIM OF LIEN ON THIS PROJECT FOR LABOR, SERVICES OR MATERIALS FURNISHED THROUGH THE DATE ABOVE.**

This conditional waiver and release does not cover any retention for labor, services or materials furnished after the date specified.

\* \* \* \* \*

## CONTRACTOR'S AFFIDAVIT UPON PROGRESS PAYMENT

Contractor hereby acknowledges and affirms that as of the date of this Release neither it nor its Subcontractors or suppliers have any claims for costs, losses, or damages, direct or indirect, for delay, disruption, interference, inefficiency, errors, omissions, conflicts or discrepancies, impacts, actual or constructive acceleration, or the like, including but not limited to, impact damages, stacking of trades, overtime, additional equipment rental, extended general conditions costs, extended field and home office overhead, or similar damages, arising out of the Work (or the Project) including additions thereto, except as to pending amounts due and owing under change orders that have been approved by Publix Super Markets, Inc. ("Owner") in writing pursuant to that certain Agreement for Construction Services between Owner and Contractor and except as specifically noted as follows:

(If left blank the Owner will assume there are none and is making payment in reliance on same.)

DATED on this \_\_\_ day, (insert year)

(insert name of Contractor)

By: \_\_\_\_\_

Its: \_\_\_\_\_

# **EXHIBIT D**

## **PAYMENT APPLICATION**