

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A201

General Conditions of the Contract for Construction

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

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to execution of the Contract, and all Modifications thereto. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 1.2.5, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.3. A Modification may be made only after execution of the Contract.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

1.1.3 THE WORK

The term Work includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total construction designed by the Architect of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify them.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Documents is to include all labor, materials, equipment and other items

as provided in Subparagraph 4.4.1 necessary for the proper execution and completion of the Work. It is not intended that Work not covered under any heading, section, branch, class or trade of the Specifications shall be supplied unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

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

1.2.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect and in accordance with any schedule agreed upon. Either party to the Contract may make written request to the Architect for such interpretations. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected by Field Order.

1.3 COPIES FURNISHED AND OWNERSHIP

1.3.1 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

1.3.2 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain his property. They are not to be used on any other project, and, with the exception of one contract set for each party to the Contract, are to be returned to the Architect on request at the completion of the Work.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person or organization licensed to practice architecture and identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect or his authorized representative.

2.1.2 Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Contractor.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide general Administration of the Construction Contract, including performance of the functions hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument which will be shown to the Contractor. The Architect will advise and consult with the Owner, and all of the Owner's instructions to the Contractor shall be issued through the Architect.

2.2.3 The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.4 The Architect will make periodic visits to the site to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an architect, he will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. The Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

2.2.5 Based on such observations and the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.6 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. The Architect will, within a reasonable time, render such interpretations as he may deem necessary for the proper execution or progress of the Work.

2.2.7 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision which he will render in writing within a reasonable time.

2.2.8 All interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor and will not show partiality to either.

2.2.9 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.10 Any claim, dispute or other matter that has been referred to the Architect, except those relating to artistic effect as provided in Subparagraph 2.2.9 and except any

which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.7.5 and 9.7.6, shall be subject to arbitration upon the written demand of either party. However, no demand for arbitration of any such claim, dispute or other matter may be made until the earlier of:

2.2.10.1 The date on which the Architect has rendered his written decision, or

2 the tenth day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date.

2.2.11 If a decision of the Architect is made in writing and states that it is final but subject to appeal, no demand for arbitration of a claim, dispute or other matter covered by such decision may be made later than thirty days after the date on which the party making the demand received the decision. The failure to demand arbitration within said thirty days' period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede any arbitration proceedings unless the decision is acceptable to the parties concerned.

2.2.12 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.8.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.13 The Architect will review Shop Drawings and Samples as provided in Subparagraphs 4.13.1 through 4.13.8 inclusive.

2.2.14 The Architect will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.3.1.

2.2.15 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and review written guarantees and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate for Payment.

2.2.16 If the Owner and Architect agree, the Architect will provide one or more Full-Time Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in Articles 1 through 14 inclusive of these General Conditions will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.18 The Architect will not be responsible for the acts or omissions of the Contractor, any Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.19 In case of the termination of the employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection whose status under the Contract Documents shall be that of the former architect. Any dispute in connection with such appointment shall be subject to arbitration.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall furnish all surveys describing the physical characteristics, legal limits and utility locations for the site of the Project.

3.2.2 The Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities.

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

3.2.4 The Owner shall issue all instructions to the Contractor through the Architect.

3.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work or persistently fails to supply materials or equipment in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven days' written notice to the Contractor and without prejudice to any other remedy he

may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect's additional services made necessary by such default, neglect or failure. The Architect must approve both such action and the amount charged to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall do no Work without Drawings, Specifications or Modifications.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes required by law.

4.7 PERMITS, FEES AND NOTICES

4.7.1 The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Work, which are applicable at the time the bids are received. It is not the responsibility of the Contractor to make certain that the Drawings and Specifications are in accordance with applicable laws, statutes, building codes and regulations.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted by appropriate Modification. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 CASH ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. These allowances shall cover the net cost of the materials and equipment delivered and unloaded at the site, and all applicable taxes. The Contractor's handling costs on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance. The Contractor shall cause the Work covered by these allowances to be performed for such amounts and by such persons as the Architect may direct, but he will not be required to employ persons against whom he makes a reasonable objection. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installation costs, overhead, profit and other expenses resulting to the Contractor from any increase over the original allowance.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the Architect, and shall not be changed except with the consent of the Architect, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

4.10 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

4.10.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

4.11 PROGRESS SCHEDULE

4.11.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Architect's approval an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents. This schedule shall indicate the dates for the starting and completion of the various stages of construction and shall be revised as required by the conditions of the Work, subject to the Architect's approval.

4.12 DRAWINGS AND SPECIFICATIONS AT THE SITE

4.12.1 The Contractor shall maintain at the site for the Owner one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction. These shall be available to the Architect. The Drawings, marked to record all changes made during construction, shall be delivered to him for the Owner upon completion of the Work.

4.13 SHOP DRAWINGS AND SAMPLES

4.13.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

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

4.13.3 The Contractor shall review, stamp with his approval and submit, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings and Samples required by the Contract Documents or subsequently by the Architect as covered by Modifications. Shop Drawings and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

4.13.4 By approving and submitting Shop Drawings and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.

4.13.5 The Architect will review and approve Shop Drawings and Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.

4.13.6 The Contractor shall make any corrections required by the Architect and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until approved. The Contractor shall direct spe-

cific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested by the Architect on previous submissions.

4.13.7 The Architect's approval of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

4.13.8 No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

4.14 USE OF SITE

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

4.15 CUTTING AND PATCHING OF WORK

4.15.1 The Contractor shall do all cutting, fitting or patching of his Work that may be required to make its several parts fit together properly, and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

4.16 CLEANING UP

4.16.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work "broom-clean" or its equivalent, except as otherwise specified.

4.16.2 If the Contractor fails to clean up, the Owner may do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 3.4.

4.17 COMMUNICATIONS

4.17.1 The Contractor shall forward all communications to the Owner through the Architect.

4.18 INDEMNIFICATION

4.18.1 The Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable,

regardless of whether or not it is caused in part by a party indemnified hereunder.

4.18.2 In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

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

5.1.3 Nothing contained in the Contract Documents shall create any contractual relation between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

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

5.2.1 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Architect in writing for acceptance by the Owner and the Architect a list of the names of the Subcontractors proposed for the principal portions of the Work. The Architect shall promptly notify the Contractor in writing if either the Owner or the Architect, after due investigation, has reasonable objection to any Subcontractor on such list and does not accept him. Failure of the Owner or Architect to make objection promptly to any Subcontractor on the list shall constitute acceptance of such Subcontractor.

5.2.2 The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) proposed for portions of the Work designated in the Contract Documents or in the Instructions to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has been rejected by the Owner and the Architect. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection.

5.2.3 If the Owner or Architect refuses to accept any Subcontractor or person or organization on a list submitted by the Contractor in response to the requirements of the Contract Documents or the Instructions to Bidders, the Contractor shall submit an acceptable substitute and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or lists of names as required by the Contract Documents or the Instructions to Bidders.

5.2.4 If the Owner or the Architect requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

5.2.5 The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the Owner and the Architect, unless the substitution is acceptable to the Owner and the Architect.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

- .1 preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- .2 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .3 require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9;
- .4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Con-

tractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

- .5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.3, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Paragraph 11.3; and
- .6 obligate each Subcontractor specifically to consent to the provisions of this Paragraph 5.3.

5.4 PAYMENTS TO SUBCONTRACTORS

5.4.1 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's Work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to his subcontractors.

5.4.2 If the Architect fails to issue a Certificate for Payment for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay that Subcontractor on demand, made at any time after the Certificate for Payment should otherwise have been issued, for his Work to the extent completed, less the retained percentage.

5.4.3 The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor under Article 11, and he shall require each Subcontractor to make similar payments to his subcontractors.

5.4.4 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of Work done by such Subcontractors.

5.4.5 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

ARTICLE 6

SEPARATE CONTRACTS

6.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project, "the Contractor" in the contract documents in each case shall be the contractor who signs each separate contract.

6.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

6.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their

work, and shall properly connect and coordinate his Work with theirs.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

6.2.3 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon due notice, settle with such other contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the Owner or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS

6.3.1 The Contractor shall be responsible for any cutting, fitting and patching that may be required to complete his Work except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Architect.

6.3.2 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.4 OWNER'S RIGHT TO CLEAN UP

6.4.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 4.16, the Owner may clean up and charge the cost thereof to the several contractors as the Architect shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

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

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither

party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Instructions to Bidders or elsewhere in the Contract Documents.

7.6 RIGHTS AND REMEDIES

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

7.7 ROYALTIES AND PATENTS

7.7.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

7.8 TESTS

7.8.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness and of the date arranged so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided.

7.8.2 If after the commencement of the Work the Architect determines that any Work requires special inspection, testing, or approval which Subparagraph 7.8.1

does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in Subparagraph 7.8.1. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents or (2), with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.8.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect.

7.8.4 If the Architect wishes to observe the inspections, tests or approvals required by this Paragraph 7.8, he will do so promptly and, where practicable, at the source of supply.

7.8.5 Neither the observations of the Architect in his Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

7.9 INTEREST

7.9.1 Any moneys not paid when due to either party under this Contract shall bear interest at the legal rate in force at the place of the Project.

7.10 ARBITRATION

7.10.1 All claims, disputes and other matters in question arising out of, or relating to, this Contract or the breach thereof, except as set forth in Subparagraph 2.2.9 with respect to the Architect's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Subparagraphs 9.7.5 and 9.7.6, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.10.2 Notice of the demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect. The demand for arbitration shall be made within the time limits specified in Subparagraphs 2.2.10 and 2.2.11 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.10.3 The Contractor shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by him and the Owner in writing.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 The Contract Time is the period of time allotted in the Contract Documents for completion of the Work.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the Work or designated portion thereof for the use for which it is intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time.

8.2.3 If a date or time of completion is included in the Contract, it shall be the Date of Substantial Completion as defined in Subparagraph 8.1.3, including authorized extensions thereto, unless otherwise provided.

8.3 DELAYS AND EXTENSIONS OF TIME

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

8.3.2 All claims for extension of time shall be made in writing to the Architect no more than twenty days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay only one claim is necessary.

8.3.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 1.2.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish

such interpretations until fifteen days after demand is made for them, and not then unless such claim is reasonable.

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

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values of the various portions of the Work, including quantities if required by the Architect, aggregating the total Contract Sum, divided so as to facilitate payments to Subcontractors in accordance with Paragraph 5.4, prepared in such form as specified or as the Architect and the Contractor may agree upon, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values shall include its proper share of overhead and profit. This schedule, when approved by the Architect, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 PROGRESS PAYMENTS

9.3.1 At least ten days before each progress payment falls due, the Contractor shall submit to the Architect an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require.

9.3.2 If payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest including applicable insurance and transportation to the site.

9.3.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor; or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 If the Contractor has made Application for Payment as above, the Architect will, with reasonable promptness but not more than seven days after the receipt of the Application, issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as he determines to be properly due, or state in writing his reasons for withholding a Certificate as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.4 and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.7.2 have been fulfilled. However, by issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.4.3 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Agreement.

9.4.4 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.5 PAYMENTS WITHHELD

9.5.1 The Architect may decline to approve an Application for Payment and may withhold his Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2. The Architect may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,
- .5 damage to another contractor,
- .6 reasonable indication that the Work will not be completed within the Contract Time, or
- .7 unsatisfactory prosecution of the Work by the Contractor.

9.5.2 When the above grounds in Subparagraph 9.5.1 are removed, payment shall be made for amounts withheld because of them.

9.6 FAILURE OF PAYMENT

9.6.1 If the Architect should fail to issue any Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner should fail to pay the Contractor within seven days after the date of payment established in the Agreement any amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received.

9.7 SUBSTANTIAL COMPLETION AND FINAL PAYMENT

9.7.1 When the Contractor determines that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.7.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

9.7.3 Neither the final payment nor the remaining retained percentage shall become due until the Contractor

submits to the Architect (1) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.7.4 If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of the Contractor, and the Architect so confirms, the Owner shall, upon certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Subparagraph 7.5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.7.5 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any special guarantees required by the Contract Documents.

9.7.6 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

10.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.4 All damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or to the acts or omissions of the Owner or Architect or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

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

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

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain such

insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workmen's compensation, disability benefit and other similar employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
- .5 claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under Paragraph 4.18.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least fifteen days' prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

11.3.2 The Owner shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.3 Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of Subparagraph 11.3.8.

11.3.4 The Owner shall file a copy of all policies with the Contractor before an exposure to loss may occur. If the Owner does not intend to purchase such insurance, he shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of himself, his Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and so to notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.5 If the Contractor requests in writing that insurance for special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.6 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance provided under this Paragraph 11.3, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The Contractor shall require similar waivers by Subcontractors and Sub-subcontractors in accordance with Clause 5.3.1.5.

11.3.7 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of his duties. He shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with an award by arbitration in which case the procedure shall be as provided in Paragraph 7.10. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

11.3.8 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owner's exercise of this power, and if such objection be made, arbitrators shall be chosen as provided in Paragraph 7.10. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 The Owner, without invalidating the Contract, may order Changes in the Work within the general scope

of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such Changes in the Work shall be authorized by Change Order, and shall be executed under the applicable conditions of the Contract Documents.

12.1.2 A Change Order is a written order to the Contractor signed by the Owner and the Architect, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Sum or the Contract Time. Alternatively, the Change Order may be signed by the Architect alone, provided he has written authority from the Owner for such procedure and that a copy of such written authority is furnished to the Contractor upon request. A Change Order may also be signed by the Contractor if he agrees to the adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.

12.1.3 The cost or credit to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 by cost and a mutually acceptable fixed or percentage fee.

12.1.4 If none of the methods set forth in Subparagraph 12.1.3 is agreed upon, the Contractor, provided he receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Architect on the basis of the Contractor's reasonable expenditures and savings, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 12.1.3.3 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Pending final determination of cost to the Owner, payments on account shall be made on the Architect's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease as confirmed by the Architect. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any.

12.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

12.1.6 Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground of an unusual nature,

differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

12.1.7 If the Contractor claims that additional cost is involved because of (1) any written interpretation issued pursuant to Subparagraph 1.2.5, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, or (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.3, the Contractor shall make such claim as provided in Paragraph 12.2.

12.2 CLAIMS FOR ADDITIONAL COST

12.2.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Subparagraph 10.3.1. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3 MINOR CHANGES IN THE WORK

12.3.1 The Architect shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the Owner and the Contractor.

12.4 FIELD ORDERS

12.4.1 The Architect may issue written Field Orders which interpret the Contract Documents in accordance with Subparagraph 1.2.5 or which order minor changes in the Work in accordance with Paragraph 12.3 without change in Contract Sum or Contract Time. The Contractor shall carry out such Field Orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any Work should be covered contrary to the request of the Architect, it must, if required by the Architect, be uncovered for his observation and replaced, at the Contractor's expense.

13.1.2 If any other Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement

shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by a separate contractor employed as provided in Article 6, and in that event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all cost of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

13.2.2 If, within one year after the Date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 All such defective or non-conforming Work under Subparagraphs 13.2.1 and 13.2.2 shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

13.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

13.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for additional architectural services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 If the Contractor fails to correct such defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 3.4.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its

removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the Contractor for the Architect's failure to issue a Certificate for Payment as provided in Paragraph 9.6 or for the Owner's failure to make payment thereon as provided in Paragraph 9.6, then the Contractor may, upon seven days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's additional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Architect.