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**HEALTH FACILITIES &
SERVICES REVIEW BOARD**



May 8, 2014

Mike Constantino
IL Health Facilities and Services Review Board
525 West Jefferson Street
Springfield, IL 62761

Permit: Illinois Health Facilities Planning Act 20 ILCS 3960
Project: # 13-073; Establish a 16 bed rehabilitation category of service
Permit Holders: Adventist Health System/Sunbelt, Inc. d/b/a
Adventist La Grange Memorial Hospital
Permit Amount: \$2,260,392

Dear Mr. Constantino,

On March 11, 2014, the Illinois Health Facilities and Services Review Board (the Board) approved the application for permit for the above referenced project. Please accept this letter as notification to the board that the applicant is in compliance with the permit requirement of 77 IL Adm. Code 1130 as disclosed below:

Obligation - Part 1130.720 - On March 11, 2014 the project was obligated and the financial resources to fund the project are thus available and fully committed. The project's cost, scope, design, square footage, number of beds is all in accordance with the Board's permit approval. Included is the executed construction agreement.

Please let me know if you need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lary A. Davis".

Lary A. Davis
Chief Executive Officer

IMPATIENT ROMAS

ConsensusDocs 200

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTOR (Lump Sum Price)



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ARTICLE 1 AGREEMENT



ConsensusDocs™ 200 - Standard Agreement and General Conditions Between Owner and Constructor - ©2011, Revised July 2012. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited. Content Secure ID: C90A23C3-1812

This Agreement is made this 18th day of December in the year 2013,

by and between the

OWNER, Adventist La Grange Memorial Hospital
5101 South Willow Springs Road
La Grange, Illinois 60525

and the

CONSTRUCTOR, Walsh Construction Company II, LLC
929 West Adams Street
Chicago, Illinois 60607

for construction and services in connection with the following

PROJECT Adventist La Grange Memorial Hospital Inpatient Rehabilitation Renovation

Notice to the Parties shall be given at the above addresses.

The Design Professional is Anderson Mikos Architects.

ARTICLE 2 GENERAL PROVISIONS

2.1 PARTIES' RELATIONSHIP AND ETHICS The Parties each agree to proceed with the Project on the basis of mutual trust, good faith, and fair dealing.

2.1.1 The Constructor shall furnish construction administration and management services and use the Constructor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Constructor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the Constructor nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless authorized in writing by the Owner's Representative.

2.2 ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.3 DESIGN PROFESSIONAL The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, except the following: N/A. The Constructor shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in section 3.15.

2.3.1 The Owner shall obtain from the Design Professional either a license for Constructor and Subcontractors to use the design documents prepared by the Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Constructor against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.4 DEFINITIONS

2.4.1 "Agreement" means this ConsensusDocs 200 Standard Agreement and General Conditions Between Owner and Constructor, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.4.1.1 The following exhibits are part of this Agreement:

Exhibit A: Schedule of the Work, [_____] pages.

Exhibit B: Labor Relations.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A "Change Order" is a written order signed by the Owner and the Constructor after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price, or Contract Time, including substitutions proposed by the Constructor and accepted by the Owner.

2.4.4 The "Contract Documents" consist of this Agreement, the existing Contract Documents listed in section 14.1, drawings, specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the Owner pursuant to subsection 3.13.4, and modifications issued in accordance with this Agreement.

2.4.5 "Contract Price" is the amount indicated in section 7.1 of this Agreement.

2.4.6 "Contract Time" is the period between the Date of Commencement and Final Completion.

2.4.7 The "Constructor" is the person or entity identified in ARTICLE 1 and includes the Constructor's Representative.

2.4.8 "Cost of the Work" means the costs and discounts specified in subsection 8.3.1.3.

2.4.9 "Date of Commencement" is as set forth in section 6.1.

2.4.10 "Day" means a calendar day.

2.4.11 "Defective Work" is any portion of the Work that does not conform to the Requirements of the Contract Documents.

2.4.12 "Design Professional" means the licensed architect or engineer, and its consultants, retained by the Owner to perform design services for the Project.

2.4.13 "Final Completion" occurs on the date when the Constructor's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.



This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Constructor.

2.4.14 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Constructor must comply that are enacted as of the Agreement date.

2.4.15 "Interim Directed Change" is a change to the Work directed by the Owner pursuant to section 8.2.

2.4.16 A "Material Supplier" is a person or entity retained by the Constructor to provide material or equipment for the Work.

2.4.17 "Others" means other contractors/constructors, material suppliers, and persons at the Worksite who are not employed by the Constructor or Subcontractors.

2.4.18 "Overhead" means (a) payroll costs and other compensation of Constructor's employees in the Constructor's principal and branch offices; (b) general and administrative expenses of the Constructor's principal and branch offices including charges against the Constructor for delinquent payments; and (c) the Constructor's capital expenses, including interest on capital used for the Work.

2.4.19 "Owner" is the person or entity identified in ARTICLE 1, and includes the Owner's Representative.

2.4.20 The "Parties" are collectively the Owner and the Constructor.

2.4.21 "The Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which the Constructor is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.4.22 The "Schedule of the Work" is the document prepared by the Constructor that specifies the dates on which the Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

2.4.23 A "Subcontractor" is a person or entity retained by the Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional, or Others.

2.4.24 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Constructor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Constructor.

2.4.25 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform a portion of the Subcontractor's Work.



2.4.26 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.27 "Work" means the construction and services necessary or incidental to fulfill the Constructor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.4.28 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTOR'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.

3.1.2 The Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Constructor shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Constructor recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

3.1.3 The Constructor shall perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.2.2 If the Owner elects to perform work at the Worksite directly or by Others, the Constructor and the Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Constructor and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Constructor, the Owner, and Others shall adhere to the revised construction schedule.



3.2.3 With regard to the work of the Owner and Others, the Constructor shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Constructor's Work with theirs.

3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Constructor shall give the Owner prompt written notification of any defects the Constructor discovers in their work which will prevent the proper execution of the Work. The Constructor's obligations in this subsection do not create a responsibility for the work of the Owner or Others, but are for the purpose of facilitating the Work. If the Constructor does not notify the Owner of defects interfering with the performance of the Work, the Constructor acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Constructor of defects, the Owner shall promptly inform the Constructor what action, if any, the Constructor shall take with regard to the defects.

3.3 RESPONSIBILITY FOR PERFORMANCE

3.3.1 Prior to commencing the Work, the Constructor shall examine and compare the drawings and specifications with information furnished by the Owner that are Contract Documents, relevant field measurements made by the Constructor, and any visible conditions at the Worksite affecting the Work.

3.3.2 Should the Constructor discover any errors, omissions, or inconsistencies in the Contract Documents, the Constructor shall promptly report them to the Owner. It is recognized, however, that the Constructor is not acting in the capacity of a licensed design professional, and that the Constructor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations. Following receipt of written notice from the Constructor of defects, the Owner shall promptly inform the Constructor what action, if any, the Constructor shall take with regard to the defects.

3.3.3 The Constructor shall have no liability for errors, omissions, or inconsistencies discovered under this section unless the Constructor knowingly fails to report a recognized problem to the Owner.

3.3.4 The Constructor may be entitled to additional costs or time because of clarifications or instructions arising out of the Constructor's reports described in this section.

3.3.5 Nothing in this section shall relieve the Constructor of responsibility for its own errors, inconsistencies, and omissions.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 The Constructor shall provide competent supervision for the performance of the Work. Before commencing the Work, the Constructor shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Constructor shall name a different superintendent or



project manager for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.4.2 The Constructor shall be responsible to the Owner for acts or omissions of parties or entities performing portions of the Work for or on behalf of the Constructor or any of its Subcontractors.

3.4.3 The Constructor shall permit only qualified persons to perform the Work. The Constructor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, the Constructor shall immediately reassign the person upon receipt of the Owner's written notice to do so.

3.4.4 CONSTRUCTOR'S REPRESENTATIVE The Constructor's authorized representative is Sean C. Walsh. The Constructor's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. If the Constructor changes its representative or their authority, the Constructor shall immediately notify the Owner in writing.

3.5 WORKMANSHIP The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 MATERIALS FURNISHED BY THE OWNER OR OTHERS If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Constructor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Constructor shall be the responsibility of the Constructor and may be deducted from any amounts due or to become due the Constructor. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Constructor of defects, the Owner shall promptly inform the Constructor what action, if any, the Constructor shall take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 The Constructor shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Constructor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.7.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the Constructor and promptly delivered to the Owner.

3.7.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Constructor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in the subsection below.



3.7.3 If the procedures described in two subsections above indicate that portions of the Work fail to comply with the Contract Documents, the Constructor shall be responsible for costs of correction and retesting.

3.8 WARRANTY

3.8.1 The Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Constructor's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner; they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

3.8.3 The Constructor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached exhibit to this Agreement. The Constructor's liability for such warranties shall be limited to the one-year correction period as provided in the section below. After that period, the Constructor shall provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Constructor in writing. Unless the Owner provides written acceptance of the condition, the Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Constructor or give the Constructor an opportunity to test or correct Defective Work as reasonably requested by the Constructor, the Owner waives the Constructor's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Constructor.

3.9.3 If the Constructor fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the



Constructor. If payments then or thereafter due the Constructor are not sufficient to cover such amounts, the Constructor shall pay the difference to the Owner.

3.9.4 The Constructor's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Constructor and allow the Constructor an opportunity to correct the Work if the Constructor elects to do so. If the Constructor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Constructor does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Constructor, the Owner shall promptly provide the Constructor with an accounting of the correction costs it incurs.

3.9.5 If the Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Constructor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Constructor's other obligations under the Contract Documents.

3.9.7 Prior to final payment, at the Owner's option and with the Constructor's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Constructor shall pay the costs of uncovering and replacement.

3.10.2 If, contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Constructor to uncover the Work for the Owner's observation. In this circumstance, the Work shall be replaced at the Constructor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 SAFETY PRECAUTIONS AND PROGRAMS The Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work or for compliance with Laws.



3.11.2 The Constructor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.11.2.1 its employees and other persons at the Worksite;

3.11.2.2 materials and equipment stored at onsite or offsite locations for use in the Work;
and

3.11.2.3 property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

3.11.3 CONSTRUCTOR'S SAFETY REPRESENTATIVE The Constructor's Worksite safety representative is Todd Ross, who shall act as the Constructor's Worksite safety representative with a duty to prevent accidents. If no individual is identified in this subsection, the Constructor's safety representative shall be the Constructor's Representative. The Constructor shall report promptly in writing to the Owner all recordable accidents and injuries occurring at the Worksite. When the Constructor is required to file an accident report with a public authority, the Constructor shall furnish a copy of the report to the Owner.

3.11.4 The Constructor shall provide the Owner with copies of all notices required of the Constructor by law or regulation. The Constructor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent acts or omissions of the Constructor, or anyone for whose acts the Constructor may be liable, shall be promptly remedied by the Constructor.

3.11.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Constructor's safety program, may require the Constructor to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Constructor does not adopt corrective measures, the Owner may perform them and deduct their cost from the Contract Price. The Constructor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on the Constructor's compliance with the Owner's reasonable request.

3.12 EMERGENCIES

3.12.1 In an emergency affecting the safety of persons or property, the Constructor shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price or Contract Time resulting from the actions of the Constructor in an emergency situation shall be determined as provided for in ARTICLE 8.

3.13 HAZARDOUS MATERIALS

3.13.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup. The Constructor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.



3.13.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, the Constructor shall be entitled to immediately stop Work in the affected area. The Constructor shall promptly report the condition to the Owner, the Design Professional, and, if required, the governmental agency with jurisdiction.

3.13.3 The Constructor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.13.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work. The Constructor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.5 If the Constructor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Constructor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

3.13.6 To the extent permitted by section 6.6 and to the extent not caused by the negligent acts or omissions of the Constructor, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall defend, indemnify, and hold harmless the Constructor, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Constructor, Subcontractors, the Owner, or Others, shall be maintained at the Worksite by the Constructor and made available to the Owner, Subcontractors, and Others.

3.13.7.2 The Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.13.7.3 To the extent caused by the negligent acts or omissions of the Constructor, its agents, officers, directors, and employees, the Constructor shall indemnify and hold harmless the Owner, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Constructor in accordance with the Contract Documents.

3.13.8 Section 3.13 shall survive the completion of the Work or any termination of this Agreement.

3.14 SUBMITTALS

3.14.1 The Constructor shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with ConsensusDocs 200.2 and subsection 4.6.1. The Constructor shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Constructor shall prepare and deliver its submittals in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. Constructor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Constructor submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Constructor. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Constructor agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

3.14.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.14.3 The Constructor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 8 are followed. Approval does not relieve the Constructor from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.14.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings.

3.14.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Constructor obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, Design Professional provide for an adjustment in the Contract Price or Contract Time.

3.14.6 The Constructor shall prepare and submit to the Owner

final marked-up as-built drawings; or

updated electronic data, in accordance with ConsensusDocs 200.2 and subsection 4.6.1; or

[] such documentation as defined by the Parties by attachment to this Agreement, in general documenting how the various elements of the Work were actually constructed or installed.

3.15 DESIGN DELEGATION If the Contract Documents specifically require the Constructor to procure design services, the Owner shall specify all required performance and design criteria. The Constructor shall not be responsible for the adequacy of such performance and design criteria. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the Constructor shall procure such services and any certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of the Constructor's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by Constructor's design professional.

3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT The Constructor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Constructor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Constructor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in ARTICLE 8.

3.17 PERMITS AND TAXES

3.17.1 The Constructor shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of the Owner, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The Constructor shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.17.2 The Constructor shall pay all applicable taxes enacted when bids are received or negotiations concluded for the Work provided by the Constructor.

3.17.3 If, in accordance with the Owner's direction, the Constructor claims an exemption for taxes, the Owner shall indemnify and hold the Constructor harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Constructor as a result of any such action.

3.18 CUTTING, FITTING, AND PATCHING

3.18.1 The Constructor shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.18.2 Cutting, patching or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.19 CLEANING UP

3.19.1 The Constructor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Constructor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Constructor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.19.2 If the Constructor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due the Constructor in the next payment period.

3.20 ACCESS TO WORK The Constructor shall facilitate the access of the Owner, Design Professional, and Others to Work in progress.

3.21 COMPLIANCE WITH LAWS The Constructor shall comply with all Laws at its own costs. The Constructor shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Constructor, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to the Owner was given, and advance approval by appropriate authorities, including the Owner, is received.

3.21.1 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs resulting from any changes in Laws, including increased taxes, which were not reasonably anticipated and then enacted after the date of this Agreement.

3.22 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Constructor shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors, and Material Suppliers as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Constructor or which the Constructor may acquire in connection with the Work. The Owner shall treat as confidential information all of the Constructor's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Constructor shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Constructor or Owner, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencing the Work and thereafter, at the written request of the Constructor, the Owner shall provide the Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Constructor's commencing or continuing the Work. The Constructor shall be notified prior to any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent Worksite conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Constructor in laying out the Work.;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.3.3 any other information or services requested in writing by the Constructor which are required for the Constructor's performance of the Work and under the Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Constructor, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving the Constructor's written request, the Owner shall provide the Constructor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, the Owner shall provide [_____] ([____]) hard copies of the Contract Documents to the Constructor without cost.

4.6.1 DOCUMENTS IN ELECTRONIC FORM If the Owner requires that the Owner, Design Professional and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional and Constructor shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addenda, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE The Owner's Representative is Ed Gervain. The Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind the Owner in all



matters requiring the Owner's approval, authorization or written notice. If the Owner changes its Representative or its Representative's authority, the Owner shall immediately notify the Constructor in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Constructor, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Constructor and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Constructor, the Owner may either (1) promptly remedy the damage or loss or (2) accept the damage or loss. If the Constructor incurs additional costs or is delayed due to such loss or damage, the Constructor shall be entitled to an equitable adjustment in the Contract Price or Contract Time.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the Constructor with its own forces shall be performed by Subcontractors.

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

5.2.1 Promptly after the award of this Agreement, the Constructor shall provide the Owner and, if directed, the Design Professional with a written list of the proposed Subcontractors and significant Material suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or Material supplier, the Owner shall notify the Constructor in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected, the Constructor shall not contract with the proposed Subcontractor or Material supplier, and the Constructor shall propose another acceptable Subcontractor or Material Supplier to the Owner. An appropriate Change Order shall reflect any increase or decrease in the Contract Price or Contract Time because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Constructor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by the Constructor to the Owner, subject to the prior rights of any surety, provided that:

5.4.1.1 this Agreement is terminated by the Owner pursuant to sections 11.3 or 11.4; and

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Constructor in writing, and assumes all rights and obligations of the Constructor pursuant to each subcontract agreement.

5.4.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in Exhibit A unless otherwise set forth below: [_____]

6.1.1 SUBSTANTIAL/FINAL COMPLETION Substantial Completion of the Work shall be achieved in (To Be Determined in Construction Change Order) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Constructor shall achieve Final Completion within (To Be Determined in Construction Change Order) Days after the date of Substantial Completion. The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence for this Agreement and the Contract Documents.

6.1.3 Unless instructed by the Owner in writing, the Constructor shall not knowingly commence the Work before the effective date of insurance to be provided by the Constructor or the Owner as required by the Contract Documents.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the Constructor shall submit to the Owner, and if directed, to the Design Professional, a Schedule of the Work showing the dates on which the Constructor plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The Constructor shall comply with the approved Schedule of the Work, unless directed by the Owner to do otherwise or the Constructor is otherwise entitled to an adjustment in the Contract Time. The Constructor shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require the Constructor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase the Constructor's costs or time, the Contract Price and Contract Time shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Constructor, the Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the Constructor include, but are not limited to, the following: (a) acts or omissions of the Owner, the Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising



from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under section 11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Constructor shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8.

6.3.2 In addition, if the Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the Constructor shall be entitled to an equitable adjustment in the Contract Price subject to section 6.6.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, the Constructor shall provide prompt written notice to the Owner of the cause of such delays after the Constructor first recognizes the delay. The Owner and the Constructor agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If the Constructor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, the Constructor shall give the Owner written notice of the claim in accordance with section 8.4. If the Constructor causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to section 6.6. The Owner shall process any such claim against the Constructor in accordance with ARTICLE 8.

6.5 LIQUIDATED DAMAGES

6.5.1 SUBSTANTIAL COMPLETION The Owner and the Constructor agree that this Agreement shall not provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.5.2 FINAL COMPLETION The Owner and the Constructor agree that this Agreement shall not provide for the imposition of liquidated damages based on the Date of Final Completion.

6.5.3 OTHER LIQUIDATED DAMAGES The Owner and the Constructor may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in section 6.5 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Constructor agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages, including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Constructor agrees to waive damages, including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this



Agreement and shall survive such termination. The following are excluded from this mutual waiver:
[None].

6.6.1 The Owner and the Constructor shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 PRICE

7.1 LUMP SUM As full compensation for performance by the Constructor of the Work in conformance with the Contract Documents, the Owner shall pay the Constructor the lump sum price of One Million Five Hundred Forty-Four Thousand Four Hundred Seventy-Eight dollars (\$1,544,478). The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in ARTICLE 8.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While the Owner may direct the amounts of, and particular material suppliers or subcontractors for specific allowance items, if the Constructor reasonably objects to a material supplier or subcontractor, it shall not be required to contract with them. The Owner shall select allowance items in a timely manner so as not to delay the Work.

7.2.2 Allowances shall include the costs of materials, supplies and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Constructor's Overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, and Interim Directed Change.

8.1 CHANGE ORDER

8.1.1 The Constructor may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order and processed in accordance with this article.

8.1.2 For changes in the Work, the Owner and the Constructor shall negotiate an appropriate adjustment to the Contract Price or the Contract Time in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

8.1.3 NO OBLIGATION TO PERFORM The Constructor shall not be obligated to perform changes in the Work that impact Contract Price or Contract Time until a Change Order has been executed or a written Interim Directed Change has been issued.

8.2 INTERIM DIRECTED CHANGE

8.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Constructor on the adjustment, if any, in the Contract Price or the Contract Time.

8.2.2 The Owner and the Constructor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the changed Work is performed, the Constructor shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Constructor fifty percent (50%) of its estimated cost to perform such Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 12.

8.2.3 When the Owner and the Constructor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the Owner and Constructor have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

8.3.1.2 a mutually accepted, itemized lump sum;

8.3.1.3 **COST OF THE WORK** Cost of the Work as defined by this subsection plus 100% for Overhead and 5% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

8.3.1.3.1 wages paid for labor in the direct employ of the Constructor in the performance of the Work;

8.3.1.3.2 salaries of the Constructor's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office performing the functions listed below:

8.3.1.3.3 cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Constructor's standard personnel policy, insofar as such costs are paid to employees of the Constructor who are included in the Cost of the Work in subsections 8.3.1.3.1 and 8.3.1.3.2 immediately above;

8.3.1.3.4 reasonable transportation, travel, and hotel expenses of the Constructor's personnel incurred in connection with the Work;

8.3.1.3.5 cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage, and handling;

8.3.1.3.6 payments made by the Constructor to Subcontractors for Work performed under this Agreement;

8.3.1.3.7 cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of the Constructor;

8.3.1.3.8 rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Constructor or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Constructor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

8.3.1.3.9 cost of the premiums for all insurance and surety bonds which the Constructor is required to procure or deems necessary, and approved by the Owner including any additional premium incurred as a result of any increase in the cost of the Work;

8.3.1.3.10 sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which the Constructor is liable;

8.3.1.3.11 permits, fees, licenses, tests, and royalties;

8.3.1.3.12 reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work;

8.3.1.3.13 all water, power, and fuel costs necessary for the Work;

8.3.1.3.14 cost of removal of all nonhazardous substances, debris, and waste materials;

8.3.1.3.15 all costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the Changed Work;

8.3.1.3.16 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Constructor, all cash discounts shall accrue to



the Constructor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.3.1.3.17 COST REPORTING The Constructor shall maintain in conformance with generally accepted accounting principles a complete and current set of records that are prepared or used by the Constructor to calculate the Cost of Work. The Owner shall be afforded access to the Constructor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. The Constructor shall preserve all such records for a period of three years after the final payment or longer where required by law;

8.3.1.3.18 COST AND SCHEDULE ESTIMATES The Constructor shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.

8.3.1.4 If an increase or decrease in the Contract Price or Contract Time cannot be agreed to as set forth in subsection 8.3.1, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the Constructor's Overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, the Constructor's Overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Constructor shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Constructor, such unit prices shall be equitably adjusted.

8.3.3 If the Owner and the Constructor disagree as to whether work required by the Owner is within the scope of the Work, the Constructor shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Constructor to proceed, the Constructor shall perform the disputed work and the Owner shall pay the Constructor fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of ARTICLE 12. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. The Constructor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and section 6.4 for any claim for an increase in the Contract Price or the Contract Time, the Constructor shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Constructor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Constructor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the

Constructor's claim no later than fourteen (14) Days after receipt of the Constructor's claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

8.5 INCIDENTAL CHANGES The Owner may direct the Constructor to perform incidental changes in the Work, upon concurrence with the Constructor that such changes do not involve adjustments in the Contract Price or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Constructor. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 9 PAYMENT

9.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, the Constructor shall prepare and submit to the Owner and, if directed, the Design Professional, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS The Constructor shall submit to the Owner and the Design Professional a monthly application for payment no later than the last Day of the calendar month for the preceding thirty (30) Days. Constructor's applications for payment shall be itemized and supported by the Constructor's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application, as certified by the Design Professional, no later than twenty (20) Days after the Constructor has submitted a complete and accurate payment application, or such shorter time period as required by applicable state statute. The Owner may deduct from any progress payment amounts that may be retained pursuant to subsection 9.2.4.

9.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by the Constructor of bills of sale and proof of required insurance, or such other documentation satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by the Owner, as a prerequisite for payment, the Constructor shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Constructor be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

9.2.3.2 RESPONSIBILITY FOR LIENS If the Owner has made payments in the time required by this article, the Constructor shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Constructor fails to take such action on a lien, the Owner may cause the lien to be removed at the Constructor's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 12 relating to the subject matter of the lien.

9.2.4 RETAINAGE From each progress payment made prior to Substantial Completion, the Owner may retain ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in section 9.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision:

9.2.4.1 after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and shall pay the Constructor the full amount due on account of subsequent progress payments;

9.2.4.2 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.4.3 the Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted. In lieu of retainage, the Constructor may furnish a retention bond or other security interest acceptable to the Owner, to be held by the Owner.

9.3 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Constructor is responsible under this Agreement:

9.3.1 the Constructor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 Except as accepted by the insurer providing builders risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Constructor to the Owner or to Others to whom the Owner may be liable;

9.3.3 the Constructor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

9.3.4 rejected, nonconforming or Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

9.3.7 uninsured third-party claims involving the Constructor, or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Constructor furnishes the Owner with



adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Constructor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Constructor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of the Constructor, the Constructor does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, then the Constructor, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Constructor has been received, including interest for late payment. The Contract Price and Contract Time shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up.

9.6 SUBSTANTIAL COMPLETION

9.6.1 The Constructor shall notify the Owner and, if directed, the Design Professional, when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the Owner without excessive interference in completing any remaining unfinished Work. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner shall promptly compile a list of items to be completed or corrected so the Owner may occupy or use the Work or designated portion for its intended use. The Constructor shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Constructor shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of the Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work. In the absence of a clear delineation of responsibilities, the Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall also list any items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by the Constructor to the Owner and, if directed, to the Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

9.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6.4 Upon the Owner's written acceptance of the Certificate of Substantial Completion, the Owner shall pay to the Constructor the remaining retainage held by the Owner for the Work described in



the Certificate of Substantial Completion, less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Constructor as necessary to achieve Final Completion. Uncompleted items shall be completed by the Constructor in a mutually agreed upon timeframe. The Owner shall pay the Constructor monthly the amount retained for unfinished items as each item is completed.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from the Constructor that the Work is complete and ready for final inspection and acceptance, the Owner with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, the Constructor shall prepare for the Owner's written acceptance a final application for payment stating that to the best of the Constructor's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the Contract Price shall be made to the Constructor within twenty (20) Days after the Constructor has submitted a complete and accurate application for final payment, including submissions required under the subsection below, and a Certificate of Final Completion has been executed by the Owner and the Constructor. ☺

9.8.4 Final payment shall be due on the Constructor's submission of the following to the Owner:

- (a) an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;
- (b) as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) release of any liens, conditioned on final payment being received;
- (d) consent of any surety; and
- (e) any outstanding known and unreported accidents or injuries experienced by the Constructor or its Subcontractors at the Worksite.

9.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Constructor, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Constructor shall submit to the Owner, and if directed, the Design Professional, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by these final payment provisions.



9.8.6 OWNER RESERVATION OF CLAIMS Claims not reserved in writing by the Owner with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

9.8.7 CONSTRUCTOR ACCEPTANCE OF FINAL PAYMENT Unless the Constructor provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Constructor shall indemnify and hold harmless the Owner, the Owner's officers, directors, members, consultants, agents, and employees, the Design Professional, and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Constructor, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Constructor shall be entitled to reimbursement of any defense costs paid above the Constructor's percentage of liability for the underlying claim to the extent provided for by the subsection below.

10.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Constructor, its officers, directors, members, consultants, agents, and employees, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by the Owner, the Design Professional, or Others, but only to the extent caused by the negligent acts or omissions of the Owner, the Design Professional, or Others. The Owner shall be entitled to reimbursement of any defense costs paid above the Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Constructor, anyone directly or indirectly employed by the Constructor or anyone for whose acts the Constructor may be liable, the indemnification obligation 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 Constructor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.2 INSURANCE

10.2.1 Before commencing the Work and as a condition precedent to payment, the Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Constructor shall maintain completed



operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Constructor's Employers' Liability, Business Automobile Liability, and CGL policies, shall be written with at least the following limits of liability:

10.2.1.1 Employers' Liability Insurance

- (a) \$1,000,000 bodily injury by accident per accident.
- (b) \$1,000,000 bodily injury by disease policy limit.
- (c) \$1,000,000 bodily injury by disease per employee.

10.2.1.2 Business Automobile Liability Insurance \$1,000,000 per accident.

10.2.1.3 Commercial General Liability Insurance

- (a) \$1,000,000 per occurrence.
- (b) \$1,000,000 general aggregate.
- (c) \$1,000,000 products/completed operations aggregate.
- (d) \$1,000,000 personal and advertising injury limit.

10.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under subsection 10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3 The Constructor shall maintain in effect all Insurance coverage required under subsection 10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Constructor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Constructor, or terminate this Agreement.

10.2.4 To the extent commercially available to the Constructor from its current insurance company, insurance policies required under subsection 10.2.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Constructor shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3 PROPERTY INSURANCE

10.3.1 Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Constructor, Subcontractors, Subsubcontractors, Material Suppliers, and the Design Professional as insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot



and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and (b) damage resulting from defective design, workmanship, or material. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Constructor, Subcontractors, Subsubcontractors, Material Suppliers, and the Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

10.3.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Constructor and the Design Professional before the Work is commenced. The Constructor may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of Constructor's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

10.3.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Constructor before the Work commences. The Constructor may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

10.3.3 The Owner and the Constructor waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Constructor may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 10.3.1.

10.3.4 To the extent of the limits of the Constructor's CGL specified in subsection 10.2.1 or One Million dollars (\$1,000,000), whichever is more, the Constructor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Constructor, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Constructor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

10.4 OWNER'S INSURANCE

10.4.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain Insurance against loss of use of the Owner's property caused by fire or other casualty loss.

10.4.2 OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses, and expenses arising out of the Owner's acts or omissions.

10.5 ADDITIONAL GENERAL LIABILITY COVERAGE

10.5.1 The Owner shall require the Constructor to purchase and maintain additional liability coverage, primary to the Owner's coverage under subsection 10.4.2.

10.5.2 If required by the above subsection, the additional liability coverage required of the Constructor shall be:

1. Additional Insured. The Owner shall be named as an additional insured on the Constructor's CGL specified for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of the Constructor, or those acting on the Constructor's behalf, in the performance of the Constructor's Work for the Owner at the Worksite.

2. OCP. The Constructor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by the Owner directly or the costs may be reimbursed by the Owner to the Constructor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, the Constructor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Owner has been named as an additional insured, as applicable.

10.6 ROYALTIES, PATENTS, AND COPYRIGHTS The Constructor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Constructor and incorporated in the Work. The Constructor shall defend, indemnify, and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify, and hold the Constructor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner or Design Professional.

10.7 BONDS

10.7.1 Performance and Payment Bonds

are not

required of the Constructor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the bonds shall each be one hundred percent

(100%) of the original Contract Price. Any increase in the Contract Price that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the Contract Price. The Constructor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though the Constructor shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Constructor's Payment Bond for the Project, if any, shall be furnished by the Owner or the Constructor upon the Subcontractor's written request.

10.8 PROFESSIONAL LIABILITY INSURANCE To the extent the Constructor is required to procure design services in accordance with section 3.15, the Constructor shall require its design professional to obtain professional liability insurance for claims arising from the negligent performance of design services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability caused by any consultants to the Constructor's design professional, written for not less than Two Million dollars (\$2,000,000) per claim and in the aggregate with the deductible not to exceed One Hundred Thousand dollars (\$100,000). The Constructor's design professional shall pay the deductible.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the Owner order the Constructor in writing to suspend, delay, or Interrupt the performance of the Work for the convenience of the Owner and not due to any act or omission of the Constructor or any person or entity for whose acts or omissions the Constructor may be liable, then the Constructor shall immediately suspend, delay or interrupt that portion of the Work for the time period ordered by the Owner. The Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension.

11.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

11.2 NOTICE TO CURE A DEFAULT If the Constructor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Constructor may be deemed in default. If the Constructor fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Constructor a second notice to correct the default within a three (3) Day period.

11.2.1 If the Constructor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the Constructor; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Constructor the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.2 In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to the Constructor, but shall give prompt written notice of such action to the Constructor following commencement of the action.

11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 **TERMINATION BY OWNER FOR DEFAULT** If, within seven (7) Days of receipt of a notice to cure pursuant to section 11.2, the Constructor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Constructor and, if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen (14) Day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner under section 11.2. If the Owner's costs arising out of the Constructor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, the Constructor shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid Contract Price, the Owner shall pay the difference to the Constructor. If the Owner exercises its rights under this section, upon the request of the Constructor, the Owner shall furnish to the Constructor a detailed accounting of the costs incurred by the Owner.

11.3.2 **USE OF CONSTRUCTOR'S MATERIALS, SUPPLIES, AND EQUIPMENT** If the Owner or Others perform work under this section, the Owner shall have the right to take and use any materials, supplies, and equipment belonging to the Constructor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Constructor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If the Constructor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Constructor or the Constructor's trustee rejects the Agreement, or if there has been a default and the Constructor is unable to give adequate assurance that the Constructor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.4 The Owner shall make reasonable efforts to mitigate damages arising from Constructor default, and shall promptly invoice the Constructor for all amounts due pursuant to sections 11.2 and 11.3.

11.3.5 If the Owner terminates this Agreement for default, and it is later determined that the Constructor was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.4.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the Constructor, the Owner may, without cause, terminate this Agreement. The Constructor shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the Owner terminates this Agreement for Convenience, the Constructor shall be paid: (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred as a result of the termination but not including Overhead or profit on Work not performed; and (c) a premium set forth in a schedule below [_____].

11.4.3 If the Owner terminates this Agreement, the Constructor shall:

(a) execute and deliver to the Owner all papers and take all action required to assign, transfer, and vest in the Owner the rights of the Constructor to all materials, supplies and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

(b) exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

(c) cancel any subcontracts, orders, and commitments as the Owner directs; and

(d) sell at prices approved by the Owner any materials, supplies, and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

11.5 CONSTRUCTOR'S RIGHT TO TERMINATE

11.5.1 Upon seven (7) Days' written notice to the Owner, the Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Constructor for any of the following reasons:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Constructor, materials are not available; or

11.5.1.3 suspension by the Owner for convenience pursuant to section 11.1

11.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Constructor may terminate this Agreement if the Owner:

11.5.2.1 fails to furnish reasonable evidence pursuant to section 4.2 that sufficient funds are available and committed for Project financing; or

11.5.2.2 assigns this Agreement over the Constructor's reasonable objection; or

11.5.2.3 fails to pay the Constructor in accordance with this Agreement and the Constructor has complied with section 9.5; or

11.5.2.4 otherwise materially breaches this Agreement.

11.5.3 Upon termination by the Constructor in accordance with section 11.5, the Constructor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.



11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

11.7 Acceptance of the contract is contingent on Certificate of Need (CON) approval by the Illinois Health Facilities Planning Board.

ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Constructor shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the Constructor continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

12.3 MITIGATION If the Parties select one of the dispute mitigation procedures below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in section 12.5. The Parties agree that the dispute mitigation procedure shall be:

Project Neutral;
or
 Dispute Review Board.

12.3.1 MITIGATION PROCEDURES The Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board shall issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

12.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in section 12.5.

12.4 MEDIATION If direct discussions pursuant to section 12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 12.3, the Parties shall endeavor to resolve

the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the current Construction Industry Arbitration Rules of the AAA or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

12.5.1 The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.5.2 VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

12.6 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

12.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Constructor that the Constructor may have under lien laws.

ARTICLE 13 MISCELLANEOUS

13.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

13.2 ASSIGNMENT Except as to the assignment of proceeds, the Parties shall not assign their interest in this Agreement without the written consent of the other. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Constructor or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Constructor than this Agreement. If such assignment occurs, the Constructor shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.



13.3 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

13.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

13.6 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.8 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 14 CONTRACT DOCUMENTS

14.1 EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Drawings: []
- (b) Specifications: []
- (c) Addenda: []
- (d) Owner Provided information: Exhibit B Owner's Program
- (e) Other: Exhibit A Schedule

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Constructor shall perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, the Constructor shall immediately submit the matter to the Owner for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Price or dispute mitigation and resolution.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

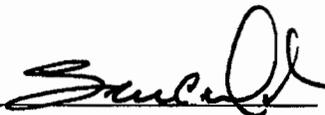
14.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to subsection 14.2.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement or signed by both Parties; (d) information furnished by the Owner pursuant to subsection 3.13.4 or designated as a Contract Document in section 14.1; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

OWNER: Adventist La Grange Memorial Hospital

BY:  NAME: Ed Gervain TITLE: VP Support Services

WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTOR: Walsh Construction Company II, LLC

BY:  NAME: Sean C. Walsh TITLE: President

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

