

**NOTICE OF SPECIAL BOARD MEETING MEETING OF THE BOARD OF TRUSTEES
MINIDOKA COUNTY JOINT SCHOOL DISTRICT #331
RUPERT, MINIDOKA COUNTY, IDAHO**

NOTICE IS HEREBY GIVEN that an **Special Meeting** of the Board of Trustees of the Minidoka County Joint School District is posted for **Wednesday, March 8, 2023 at 5:15 PM** at the **District Service Center 310 10th Street Rupert, ID 83350** at which meeting the following business will be conducted:

CALL TO ORDER & ROLL CALL:

Bonnie Heins, Chair
Rick Stimpson, Vice Chair
Russ Suchan, Trustee
Jeff Gibson, Trustee
Mary Andersen, Trustee

Dr. Kenneth Cox, Superintendent
Kerri Tibbitts, Board Clerk
Reed Cotten, School Counsel

1. CALL TO ORDER
2. ROLL CALL
3. INTERVIEWS FOR POSSIBLE REPLACEMENT WITH VACANCY OF ZONE #3
4. BUSINESS
 - A. Approval of Possible Replacement in Zone #3 (Vacancy)
 - B. Approval of Petersen Brother's Contract for Ag Building
5. ADJOURNMENT

2

#boldsubject#

** Robert's Rules of Order will govern all meetings

*** Any person needing special accommodations to participate in the above-noticed meeting should contact the Minidoka County School District one (1) day prior to the meeting at 310 10th St., Rupert, Id. (208) 436-4727

STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER
AND CONSTRUCTION MANAGER

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This Agreement has important legal and insurance consequences. Consultation with an attorney and with insurance and surety consultants is encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.

ARTICLE 1 AGREEMENT

This Agreement is made this 8th day of March in the year 2023, by and between the
OWNER:

Minidoka School District #331
310 10th St. Rupert, ID 83305
and the

CONSTRUCTION MANAGER:

Petersen Brothers Construction Inc.
1920 Highland Ave east Twin Falls, ID 83301

for services in connection with the following PROJECT:

Minidoka County School District Ag building

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

ARTICLE 2 GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES The Owner and the Construction Manager agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

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

2.1.2 The Construction Manager 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 Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in the Agreement or unless authorized in writing by Owner's Representative.

2.1.4 The Owner and the Construction Manager shall perform their obligations with integrity, ensuring at a minimum that:

2.1.4.1 conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.4.2 the Owner and the Construction Manager warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subconsultants or others from whom they may be liable, to secure preferential treatment.

2.2 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement and each and every provision thereof is for the exclusive benefit of the Owner and Construction Manager and not for the benefit of any third party except to the extent expressly provided in this Agreement.

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. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in section 3.1.6.

2.3.1 The Owner shall obtain from the Design Professional either a license for Construction Manager 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 Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents.

2.4 DEFINITIONS

2.4.1 Agreement means this Agreement and General Conditions Between Owner and Construction Manager (Where the Basis of Payment is the Cost of the Work), as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

2.4.2 Design Professional means the licensed Architect, Design Professional or Engineer, and its consultants, retained by Owner to perform design services for the Project. The Owner's Design Professional for the Project is Minidoka County School District #331 Ag Building.

2.4.3 The Contract Documents consist of this Agreement, the drawings, specifications, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the Owner under section 4.3, other documents listed in this Agreement and any modifications issued after execution.

2.4.4 The Construction Manager is the person or entity identified in ARTICLE 1 and includes the Construction Manager's Representative.

2.4.5 The term Day shall mean calendar day unless otherwise specifically defined.

2.4.6 Final Completion occurs on the date when the Construction Manager'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 Construction Manager.

2.4.7 A Material Supplier is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.4.8 Others means other contractors, material suppliers and persons at the Worksite who are not employed by the Construction Manager or Subcontractors.

2.4.9 The term Overhead shall mean (a) payroll costs and other compensation of Construction Manager's employees in the Construction Manager's principal and branch offices; (b) general and administrative expenses of the Construction Manager's principal and branch offices including deductibles paid on any insurance policy, charges against the Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) the Construction Manager's capital expenses, including interest on capital used for the Work.

2.4.10 Owner is the person or entity identified in ARTICLE 1 and includes the Owner's representative.

2.4.11 The Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

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

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

2.4.14 A Subcontractor is a person or entity retained by the Construction Manager 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.

2.4.15 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 Work, or a designated portion, for the use for which it is intended. 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 Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

2.4.16 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

2.4.17 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.

2.4.18 Work means the construction and services necessary or incidental to fulfill the Construction Manager'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.

2.4.18.1 Changed Work means work that is different from the original scope of Work.

2.4.18.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in sections 3.4 and 3.5.

2.4.19 Worksite means the location in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Construction Manager 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 as being necessary to produce the indicated results.

3.1.2 The Construction Manager 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 Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager 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 Construction Manager shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable law.

3.1.4 WORKSITE VISIT The Construction Manager 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.

3.1.5 CONSTRUCTION MANAGER'S REPRESENTATIVE The Construction Manager's authorized representative is Jeremy Petersen. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Construction Manager shall notify the Owner in writing of a change in the designation of the Construction Manager's Representative.

3.1.6 PROFESSIONAL SERVICES The Construction Manager may be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures or as such services are specifically called for by the Contract Documents. The Construction Manager shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner, and the Design Professional, shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner shall indicate all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. The Construction Manager shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

3.2 PRECONSTRUCTION SERVICES

3.2.1 The Preconstruction services under this Agreement include the following:

3.2.2 PRELIMINARY EVALUATION The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Design Professional.

3.2.3 CONSULTATION The Construction Manager shall schedule and attend regular meetings with the Owner and Design Professional. The Construction Manager shall consult with the Owner and Design Professional regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.2.4 ESTIMATES

3.2.4.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Design Professional has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Design Professional and approval of the Owner, an initial estimate for the Project, utilizing area, volume or similar conceptual estimating techniques.

3.2.4.2 When schematic or preliminary design documents have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare for the review of the Design Professional and approval of the Owner, a more detailed estimate with supporting data including, where possible, data from potential trade contractors. During the preparation of the design development documents or documents of comparable detail, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.2.4.3 When design development documents or documents of comparable detail have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare a further detailed estimate with supporting data, including where possible, data from potential trade contractors for review by the Design Professional and approval by the Owner. During the preparation of the Drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.2.4.4 If any estimate submitted to the Owner exceeds previously approved estimates, the Construction Manager shall notify and make recommendations to the Owner.

3.2.5 CONSTRUCTION DOCUMENT REVIEW The Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall issue a report to the Design Professional and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Design Professional any errors or omissions which it discovers in the drawings and specifications.

3.2.6 TEMPORARY FACILITIES The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials and services for common use by the Construction Manager, its Subcontractors, Sub-subcontractors and Material Suppliers.

3.2.7 LONG-LEAD ITEMS The Construction Manager shall recommend to the Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. The Construction Manager shall help expedite the delivery of long-lead-time items.

3.2.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Design Professional a list of possible Subcontractors from whom

proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Construction Manager if the Owner or Design Professional knows of any objection to a subcontractor. The Owner may designate specific persons or entities from which the Construction Manager shall solicit bids.

3.2.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

3.2.10 CONSULTANTS The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories and special consultants as needed.

3.2.11 PERMITS The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Construction Manager.

3.3 CONSTRUCTION SERVICES AND ADMINISTRATION

3.3.1 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Construction Manager shall examine and compare the Contract Documents with information furnished by the Owner pursuant to section 4.3; relevant field measurements made by the Construction Manager; and any visible conditions at the Worksite affecting the Work.

3.3.2 If in the course of the performance of the obligations in subsection 3.3.1, the Construction Manager discovers any errors, omissions or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed design professional, and that the Construction Manager'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 Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.3.3 The Construction Manager has no liability for errors, omissions or inconsistencies discovered under subsections 3.3.1 and 3.3.2 unless the Construction Manager knowingly failed to report a recognized problem to the Owner.

3.3.4 COST REPORTING The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded reasonable access during normal business hours to all the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this

Agreement. The Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.3.4.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee them.

3.3.5 CONSTRUCTION PERSONNEL AND SUPERVISION

3.3.5.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's(s') qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.3.5.2 The Construction Manager 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 Construction Manager or any of its Subcontractors.

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

3.3.6 SUBMITTALS

3.3.6.1 The Construction Manager shall submit to the Owner and, if directed, to its Design Professional for review and the Owner's approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with subsection 4.6.1. The Construction Manager shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Construction Manager shall prepare and deliver its submittals to the Owner in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the Construction Manager delivers its submittals to the Owner, the Construction Manager shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager 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. Such approval shall be promptly memorialized in a change order, and, if applicable, provide for an equitable adjustment in the estimated Cost of the Work, Schedule of the Work, or both. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically

identifying and authorizing such deviation to the Construction Manager. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturer's literature or similar submittals as may reasonably be required by the Owner.

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

3.3.6.3 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.3.6.4 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 and other modifications, and required submittals including product data, samples and shop drawings.

3.3.6.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly in a change order and, if applicable, provide for an adjustment in the estimated Cost of the Work, Schedule of the Work, or both.

3.3.7 The Construction Manager shall prepare and submit to the Owner final marked-up as-built drawings

3.3.8 COOPERATION WITH WORK OF OWNER AND OTHERS

3.3.8.1 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, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

3.3.8.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and 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 Construction Manager and assist with the coordination of activities and the review of construction schedules and operations.

3.3.8.3 With regard to the work of the Owner and Others, the Construction Manager shall (a) proceed with the Work in a manner which 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 Construction Manager's construction and operations with theirs as required by this subsection.

3.3.8.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner prompt, written notification of any defects the Construction Manager discovers in their work which will prevent the proper execution of the Work. The Construction Manager's obligations in this subsection do not create a responsibility for the work of Others, but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of patent defects interfering with the performance of the Work, the Construction Manager 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 Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.3.9 CUTTING, FITTING AND PATCHING

3.3.9.1 The Construction Manager 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.

3.3.9.2 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.

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

3.3.11 ACCESS TO WORK The Construction Manager shall facilitate the access of the Owner, its Design Professional and Others to Work in progress.

3.3.12 MATERIALS FURNISHED BY THE OWNER OR OTHERS In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager 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. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.3.13 TESTS AND INSPECTIONS

3.3.13.1 The Construction Manager 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 Construction Manager 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. The Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents except as provided in subsection 3.3.13.3, and 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 Construction Manager and promptly delivered to the Owner.

3.3.13.2 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 Construction Manager 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 subsection 3.3.13.3.

3.3.13.3 If the procedures described in subsections 3.3.13.1 and 3.3.13.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for the costs of correction and retesting.

3.4 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.

3.5 WARRANTY

3.5.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will 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 Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Manager'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 Construction Manager's warranty pursuant to this section shall commence on the Date of Substantial Completion.

3.5.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.5.3 The Construction Manager 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. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in section 3.6. After that period Construction Manager shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

3.6 CORRECTION OF WORK WITHIN ONE YEAR

3.6.1 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 Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work. If within the one-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager'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.

3.6.2 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 Construction Manager.

3.6.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner, the Owner may correct it in accordance with the Owner's right to carry out the Work in section 10.2.

3.6.4 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager. If the Construction Manager 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. The Construction Manager shall complete the correction of Work within a mutually agreed time frame. If the Construction Manager does not elect to correct the Work the Owner may have the Work corrected by itself or Others and charge the Construction Manager for the reasonable cost of the correction. Owner shall provide Construction Manager with an accounting of correction costs it incurs.

3.6.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged construction.

3.6.6 The one-year period for correction of Defective Work does not affect a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents.

3.6.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction.

3.7 SAFETY OF PERSONS AND PROPERTY

3.7.1 SAFETY PRECAUTIONS AND PROGRAMS The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. While this section establishes the responsibility for safety between the Owner and Construction Manager, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.7.2 The Construction Manager shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.7.2.1 its employees and other persons at the Worksite;

3.7.2.2 materials and equipment stored at on-site or off-site locations for use in of the Work; and

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

3.7.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE The Construction Manager's Worksite Safety Representative shall be identified in written to the Owner and he/her shall act as the Construction Manager's authorized safety representative with a duty to prevent accidents in accordance with subsection 3.7.2. If no individual is, the authorized safety representative shall be the Construction Manager's Representative. The Construction Manager shall report immediately in writing all recordable accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

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

3.7.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent of the negligence attributed to acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.7.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them.

3.8 EMERGENCIES In an emergency, the Construction Manager shall act in a reasonable manner to prevent personal injury or property damage of this Agreement.

3.9 HAZARDOUS MATERIALS

3.9.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the project 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 government agency.

3.9.2 If after the commencement of the Work, Hazardous Material is discovered at the project Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall report the condition to the Owner and, if required, the government agency with jurisdiction.

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

3.9.4 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 effects upon the Work. The Construction Manager 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.

3.9.5 To the extent not caused by the negligent acts or omissions of the Construction Manager, its Subcontractors and Sub-subcontractors, and the agents, officers, directors and employees of each of them, the Owner shall indemnify and hold harmless the Construction Manager, its Subcontractors and Sub-subcontractors, 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 procedure, to the extent permitted pursuant to section 11.1, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.9.6 MATERIALS BROUGHT TO THE WORKSITE

3.9.6.1 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 Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors and Others.

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

3.9.6.3 To the extent not caused by the negligent acts or omissions of the Owner, its agents, officers, directors and employees, the Construction Manager shall indemnify and hold harmless the Owner, its agents, officers, directors and employees from and against claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution, 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 Construction Manager in accordance with the Contract Documents.

3.9.6.4 The terms of this section shall survive the completion of the Work or any termination of this Agreement.

3.10 CONCEALED OR UNKNOWN WORKSITE 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 Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner. The Construction Manager shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties.

3.11 PERMITS AND TAXES

3.11.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to section 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses and renewals required under this Agreement.

3.11.2 Construction Manager shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

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

3.12 CONFIDENTIALITY The Construction Manager shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and 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 Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall treat as confidential information all of the Construction Manager'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 Construction Manager shall each specify those items to be treated as confidential and shall mark them as "Confidential."

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work.

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

4.3 WORKSITE INFORMATION Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager is entitled to rely on Worksite information furnished by the Owner pursuant to this section. 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;

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 Construction Manager which is relevant to the Construction Manager's performance of the Work and under the Owner's control. The information required by this section shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site 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 Construction Manager in laying out the Work.

4.4 BUILDING PERMIT, FEES AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Construction Manager pursuant to subsection 3.11.1, 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 Construction Manager's written request, the Owner shall provide the Construction Manager 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 interest in the real property on which the Project is located and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide three copies of the Contract Documents to the Construction Manager without cost.

4.6.1 DIGITIZED DOCUMENTS If the Owner requires that the Owner, Design Professional and Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional and Construction Manager shall agree on a written protocol governing all exchanges in a separate Agreement, 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 authorized representative is Rick Stimpson. The 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 the representative's authority as listed above, the Owner shall immediately notify the Construction Manager 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 Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Construction Manager 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 SEQUENCE OF THE WORK

4.10.1 The Owner may determine the sequence in which the Work is performed, provided it does not unreasonably interfere with the Construction Manager's Work. The Owner may require the Construction Manager 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.

4.10.2 The Owner, for any reason, may require the Construction Manager at any time to perform any portion of the Work on an overtime basis or may require the Construction Manager not to perform any portion of the Work on an overtime basis. If the Owner requires overtime Work, the overtime portion will be considered a Cost of the Work.

4.10.3 The Owner, for any reason, may request a delay of the Work in order to allow the Owner sufficient time to secure funding to pay for the Work. The portion of the Work shall be performed without the consent of the Owner

4.11 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 Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the Construction Manager 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 As soon after the execution of the Agreement as possible the Construction Manager 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 Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected as provided in subsection 5.2.1, the Construction Manager shall not contract with the proposed Subcontractor or Material Supplier, and the Construction Manager shall propose another acceptable to the Owner.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager 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 Subcontractors and Material Suppliers portions of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Construction Manager 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 10.3 or 10.4; and

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager 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, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 COMPENSATION

6.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

6.1.1 the Cost of the Work as allowed in ARTICLE 7; and

6.1.2 the Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in section 6.4.

6.2 Payment for Work performed shall be as set forth in ARTICLE 8.

6.3 CONSTRUCTION MANAGER'S FEE The Construction Manager's Fee shall be as follows, subject to adjustment as provided in section 6.4: (State whether a stipulated sum or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)

6.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE Adjustment in the Construction Manager's Fee shall be made as follows:

6.4.1 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

6.5 PRECONSTRUCTION SERVICES COMPENSATION The Construction Manager shall be compensated for Preconstruction services, as set forth in sections 3.2 and 3.3, as follows: Ten Thousand Dollars (\$10,000.00) (State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month).

ARTICLE 7 COST OF THE WORK

7.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to the Construction Manager's Fee stipulated in section 6.3.

7.2 COST ITEMS The Cost of the Work includes:

7.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

7.2.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

7.2.3 Cost of all 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 Construction Manager's standard personnel policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work under subsections 7.2.1 and 7.2.2

7.2.4 Reasonable transportation, travel, hotel and moving expenses of the Construction Manager's personnel incurred in connection with the Work.

7.2.5 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.

7.2.6 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement.

7.2.7 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 on such items used, but not consumed that remain the property of the Construction Manager.

7.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager 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 Construction Manager 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.

7.2.9 Cost of the premiums for all insurance and surety bonds which the Construction Manager is required to procure or deems necessary, and approved by the Owner.

7.2.10 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Construction Manager is liable.

7.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Construction Manager is not responsible as set forth in section 9.4, and deposits lost for causes other than the Construction Manager's negligence.

7.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the construction and for a period of one year following the date of Substantial Completion of the Work, provided that such corrective work did not arise from the negligence of the Construction Manager.

7.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

7.2.14 All costs associated with demobilizing and remobilizing the field office and the Construction Manager's workforce, including Subcontractor workforces, as a result of a suspension of the Work by the Owner.

7.2.15 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.

7.2.16 All water, power and fuel costs necessary for the Work.

7.2.17 Cost of removal of all nonhazardous substances, debris and waste materials.

7.2.18 Costs incurred due to an emergency affecting the safety of persons or property.

7.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work.

7.2.20 Additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Agreement.

7.2.21 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in ARTICLE 6, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

7.3 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 Construction Manager, all cash discounts shall accrue to the Construction Manager. 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.

ARTICLE 8 PAYMENT

8.1 PROGRESS PAYMENTS

8.1.1 APPLICATIONS The Construction Manager shall submit to the Owner and, if directed, its Design Professional, a monthly application for payment no later than the 25th Day of the calendar month for the preceding thirty (30) Days. The application for payment shall consist of the Cost of the Work performed up to the 30 Day of the month, including the cost of material suitably stored on the Worksite or at other locations approved by the Owner, along with a proportionate share of the Construction Manager's Fee. Approval of payment applications for such stored materials stored off-site shall be conditioned upon submission by the Construction Manager of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the Worksite. Prior to submission of the next application for payment, the Construction Manager shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the Construction Manager.

8.1.2 Within ten (10) business Days after receipt of each monthly application for payment, the Owner shall give written notice to the Construction Manager of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) business Days after accepting such application, the Owner shall pay directly to the Construction Manager the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Construction Manager cannot agree on a revised amount then, within fifteen (15) business Days after its initial rejection in part of such application, the Owner shall pay directly to the Construction Manager the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid

by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

8.1.3 LIEN WAIVERS AND LIENS

8.1.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If requested by the Owner, as a prerequisite for payment, the Construction Manager 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 Construction Manager 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.

8.1.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, the Construction Manager 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 Construction Manager fails to take such action on a lien, the Owner may cause the lien to be removed at the Construction Manager's expense, including bond costs and reasonable attorneys' fees. This section shall not apply if there is a dispute pursuant to ARTICLE 11 relating to the subject matter of the lien.

8.2 ADJUSTMENT OF CONSTRUCTION MANAGER'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 Construction Manager is responsible under the Agreement:

8.2.1 the Construction Manager's repeated failure to perform the Work as required by the Contract Documents.

8.2.2 loss or damage arising out of or relating to this Agreement and caused by Construction Manager to the Owner or Others to whom the Owner may be liable.

8.2.3 the Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner.

8.2.4 third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Construction Manager 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 Construction Manager, 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 Construction Manager 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.

8.3 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.

8.4 PAYMENT DELAY If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, then the Construction Manager, 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 Construction Manager has been received, including interest from the date when payment was due in accordance with section 8.8.

8.5 SUBSTANTIAL COMPLETION

8.5.1 The Construction Manager shall notify the Owner and, if directed, its Design Professional when it considers that 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 utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Construction Manager. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Design Professional shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

8.5.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. In the absence of a clear delineation of responsibilities, the Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance and damages to the Work. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner, and, if directed, to its Design Professional, for the Owner's written acceptance of responsibilities assigned in the Certificate.

8.5.3 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.

8.6 PARTIAL OCCUPANCY OR USE

8.6.1 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) public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute

Substantial Completion of that portion of the Work. Owner shall not unreasonably refuse to accept partial occupancy.

8.7 FINAL COMPLETION AND FINAL PAYMENT

8.7.1 Upon notification from the Construction Manager 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.

8.7.2 When the Work is complete, the Construction Manager shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

8.7.3 Final payment shall be made to the Construction Manager within twenty (20) Days after the Construction Manager has submitted an application for final payment, including submissions required under subsection 8.7.4, and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

8.7.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

8.7.4.1 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;

8.7.4.2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

8.7.4.3 release of any liens, conditioned on final payment being received;

8.7.4.4 consent of any surety; and

8.7.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

8.7.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the estimated Cost of the Work for Work not fully completed and accepted is less than the retained amount prior to payment, the Construction Manager shall submit to the Owner, and if directed, to 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 section 8.7.

8.7.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

8.7.7 ACCEPTANCE OF FINAL PAYMENT Unless the Construction Manager provides written identification of unsettled claims known to the Construction Manager at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

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

ARTICLE 9 INDEMNITY, INSURANCE, AND WAIVERS

9.1 INDEMNITY

9.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, 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 under subsection 9.3.5, 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 Construction Manager, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for under subsection 9.1.2.

9.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, 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 under subsection 9.3.5, including reasonable attorneys' fees, costs and expenses that may arise from the performance of work by Owner, Design Professional or Others, but only to the extent caused by the negligent acts or omissions of the Owner, Design Professional or Others. The Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under subsection 9.1.1.

9.2 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES The Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. 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, the services of employees, or loss of reputation. The Construction Manager agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity or loss of reputation. This section shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.

9.3 INSURANCE

9.3.1 The Construction Manager shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Construction Manager or the Owner.

9.3.2 Prior to the start of Work, the Construction Manager 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 Construction Manager shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. If requested, the Construction Manager shall provide the Owner with certificates of the insurance coverages required. The Construction Manager's Employers Liability, Business Automobile Liability, and Commercial General Liability policies, as required in this subsection, shall be written with at least the following limits of liability:

9.3.2.1 Employers' Liability

- a. \$1,000,000.00 Bodily Injury by Accident Each Accident
- b. \$[_____] \$500,000.00 Bodily Injury by Disease Policy Limit
- c. \$[_____] \$500,000.00 Bodily Injury by Disease Each Employee

9.3.2.2 Business Automobile Liability Insurance

- a. \$[_____] \$1,000,000.00 Each Accident

9.3.2.3 Commercial General Liability Insurance

- a. \$[_____] \$1,000,000.00 Each Occurrence
- b. \$[_____] \$2,000,000.00 General Aggregate
- c. \$[_____] \$2,000,000.00 Products/Completed Operations Aggregate
- d. \$[_____] \$1,000,000.00 Personal and Advertising Injury Limit

9.3.3 Employers' Liability, Business Automobile Liability and Commercial General Liability coverages required under subsection 9.3.2 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.

9.3.4 To the extent commercially available to the Construction Manager from its current insurance company, insurance policies required under subsection 9.3.2 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 cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Construction Manager 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 9.3.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

9.3.5 PROPERTY INSURANCE Before the start of 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 Owner, Construction Manager, Subcontractors and Sub-subcontractors as named 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 at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material, and material and equipment stored offsite, onsite, or in transit. 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 Construction Manager, Subcontractors, Sub-subcontractors and Material Suppliers. 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. Prior to commencement of the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

9.3.6 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 Construction Manager and the Design Professional before the Work is commenced. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Sub-subcontractors, including the coverage of deductibles. In such case, the cost of this insurance shall be a Cost of the Work. The Owner shall be responsible for all of Construction Manager's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

9.3.6.1 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 Construction Manager before the Work is commenced. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Sub-subcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner as a Cost of the Work and memorialized in a change order.

9.3.7 Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub subcontractors and the Design Professional for damages caused by risks covered by the property insurance provided under subsection 9.3.5, except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 9.3.5.

9.3.8 To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in subsection 9.3.2 or [_____] Dollars (\$[_____]) whichever is more, the Construction Manager 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 Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Construction Manager, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

9.3.9 The policies shall also be endorsed to state that the carrier waives any right of subrogation against the Construction Manager, the Design Professional, Subcontractors, Material Suppliers or Sub-subcontractors.

9.3.10 OWNER'S INSURANCE The Owner shall 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 errors or omissions.

9.4 ADDITIONAL LIABILITY COVERAGE

9.4.1 Owner shall require Construction Manager to purchase and maintain liability coverage, primary to Owner's coverage under subsection 9.3.10.

9.4.2 If required by subsection 9.4.1 the additional liability coverage required of the Construction Manager shall be:

1. Additional Insured. Owner shall be named as an additional insured on Construction Manager's Commercial General Liability Insurance 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 Construction Manager, or those acting on Construction Manager's behalf, in the performance of Construction Manager's Work for Owner at the Worksite.

9.5 ROYALTIES, PATENTS AND COPYRIGHTS The Construction Manager 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 Construction Manager and incorporated in the Work. The Construction Manager shall 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 indemnify and hold the Construction Manager 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.

ARTICLE 10 SUSPENSION, NOTICE TO CURE AND TERMINATION OF AGREEMENT

10.1 SUSPENSION BY OWNER FOR CONVENIENCE

10.1.1 OWNER SUSPENSION Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner.

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

10.2 NOTICE TO CURE A DEFAULT If the Construction Manager refuses or persistently fails to supply enough properly skilled workers, proper materials, or equipment, or fails to make prompt payment to its workers, subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement the Construction Manager may be deemed in default. If the Construction Manager fails within seven (7) Days after receipt of written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager 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:

10.2.1 supply workers and materials, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default;

10.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default;

10.2.3 withhold payment due the Construction Manager in accordance with section 8.2; and

10.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in subsections 10.2.1 and 10.2.2 without first giving written notice to the Construction Manager but shall give prompt written notice of such action to the Construction Manager following commencement of the action.

10.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

10.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) Days of receipt of a notice to cure pursuant to section 10.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Construction Manager 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 Owner under section 10.2.

10.3.2 USE OF CONSTRUCTION MANAGER'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, equipment belonging to the Construction Manager 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 Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

10.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement or, if there has been a default, the Construction Manager is unable to give adequate assurance that the Construction Manager 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.

10.3.4 The Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default and shall promptly invoice the Construction Manager for all amounts due pursuant to section 10.2 and 10.3.

10.4 TERMINATION BY OWNER FOR CONVENIENCE

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

10.4.2 If the Owner terminates this Agreement pursuant to this section, the Construction Manager shall be paid:

10.4.2.1 for the Work performed to date including overhead and profit; and

10.4.2.2 for all demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed; and

10.4.2.3 a premium as set forth in a schedule below. (Insert here the schedule agreed to by the Parties).

10.4.3 If the Owner terminates this Agreement pursuant to sections 10.3 or 10.4, the Construction Manager shall:

10.4.3.1 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 Construction Manager to all materials, supplies and equipment for which payment has 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;

10.4.3.2 exert reasonable efforts 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;

10.4.3.3 cancel any subcontracts, orders and commitments as the Owner directs; and

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

10.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

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

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

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

10.5.1.3 suspension by Owner for convenience pursuant to section 10.1.

10.5.2 In addition, upon seven (7) Days written notice to the Owner, the Construction Manager may terminate the Agreement if the Owner:

10.5.2.1 fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 4.2, or

10.5.2.2 assigns this Agreement over the Construction Manager's reasonable objection, or

10.5.2.3 fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with section 8.5, or

10.5.2.4 otherwise materially breaches this Agreement.

10.5.3 Upon termination by the Construction Manager in accordance with section 10.5, the Construction Manager 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 the premium as set forth in subsection 10.4.2.

10.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to this article, 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.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

11.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Construction Manager shall continue the Work during any dispute mitigation or resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

11.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the 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.

11.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, 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 11.5. The Parties agree that the dispute mitigation procedure shall be:

Project Neutral

11.3.1 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's/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 finding(s) within five (5) business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

11.4 MEDIATION If direct discussions pursuant to section 11.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 11.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, 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 being first discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.6 MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a claim shall 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.

11.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Construction Manager which the Construction Manager may have under lien laws.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 ASSIGNMENT Neither the Owner nor the Construction Manager shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement 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 Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Construction Manager than this Agreement. In the event of such assignment, the Construction Manager shall execute any consents 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.

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

12.3 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.

12.4 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.

12.5 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of sections or the use of headings be construed to limit or alter the meaning of any provisions.

12.6 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.

12.7 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.

12.8 OTHER PROVISIONS

ARTICLE 13 CONTRACT DOCUMENTS

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

13.2 INTERPRETATION OF CONTRACT DOCUMENTS

13.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

13.2.2 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 Construction Manager shall immediately submit the matter to the Owner, and if directed, to its Design Professional for clarification. The Owner's clarifications are final and binding on all Parties.

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

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

13.2.5 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) the Agreement; (c) subject to subsection 13.2.2 the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to section 4.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

This Agreement is entered into as of the date entered in ARTICLE 1.

OWNER: Minidoka School District #331

BY: _____

PRINT NAME Bonnie Heins

PRINT TITLE Board Chair

ATTEST:

Kerri Tibbitts, Clerk of the Board

CONSTRUCTION MANAGER: Petersen Brothers Construction Inc

BY: _____

PRINT NAME Jeremy Petersen

PRINT TITLE President

END OF DOCUMENT.