

VAIL UNIFIED SCHOOL DISTRICT NO. 20

Request for Qualifications (RFQ) 22-004-27

Construction Manager at Risk (CMAR) Services for Vail Unified School District No. 20, for Building Expansions at Vail Academy and High School (Project).

**CONTRACT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR
(GUARANTEED MAXIMUM PRICE)**

THIS AGREEMENT, effective this _____ day of _____, 2020, by and between _____ hereinafter called the "Contractor," and Vail Unified School District No. 20, hereinafter called the "Owner":

WITNESSETH:

That the Contractor and the Owner agree as follows:

**ARTICLE 1
THE PROJECT**

1.1 As required by the Contract Documents, the Contractor shall furnish and install all of the materials and labor and perform all of the work for the Owner's project known as RFQ 19-002-23 Construction Manager at Risk (CMAR) Services for Vail Unified School District No. 20, for Classroom Addition at Vail Inclusive Pre-School (VIP), located at Mica Mountain High School. Drawings and Specifications for this Project were prepared by Swaim Associates, Ltd. ("Architect"), registered architect(s), who shall act as Architect pursuant to the Contract Documents.

**ARTICLE 2
THE CONTRACT DOCUMENTS**

2.1 The following listed documents constitute the Contract Documents, and they are all as fully a part of the Contract and General Conditions Between Owner and Contractor ("Contract" herein) as if herein repeated:

1. This Contract.
2. Notice to Proceed dated _____.
3. Performance Bond and Labor and Material Payment Bond.
4. Exclusions/Clarifications as set forth on Exhibit D.
5. Specifications and Drawings, including all Addenda referenced therein as set forth in Exhibit A, incorporated herein by this reference, to this Contract.
6. Certificates of Insurance.

In the event of conflict, Addenda shall have precedence over Specifications, which shall have precedence over Drawings. Later dated documents shall have precedence over earlier documents.

2.2 In the event of any inconsistency between any of the terms of the above enumerated documents, such inconsistencies shall be resolved by giving precedence to the terms of the lowest numbered of the above numbered documents.

ARTICLE 3 CONTRACT AMOUNT

3.1 CONTRACT AMOUNT. The Contract Amount shall be a Guaranteed Maximum Price comprised of the total of Direct Costs of Construction, General Job Expenses and Contractor's Fee for overhead and profit. The Contractor guarantees the Contract Amount shall not exceed _____ Dollars (\$_____), such Guaranteed Maximum Price shall be increased or decreased for changes in the Work as provided in Article 15, and shall be decreased as provided in Article 3.1.3 in the event the total amount of the Direct Cost of Construction is less than the amount provided herein. The Direct Cost of Construction shall include all costs of any nature necessary to the performance of the Work that are not included as Contractor's Fee or General Job Expenses.

3.1.1 CONTRACTOR'S FEE. In consideration of the performance of the Work, the Owner agrees to pay the Contractor as compensation for his overhead and profit a Contractor's Fee of _____ Dollars (\$_____). The Fee is payable monthly in proportion to the percentage of Work accomplished.

3.1.2 GENERAL JOB EXPENSES. In addition to the Direct Cost of Construction and the Contractor's Fee, the Contractor shall be paid the sum of _____ Dollars (\$_____) for General Job Expenses (also known as General Conditions), which General Job Expenses shall include the items enumerated on Exhibit B, attached hereto and incorporated herein by this reference. General Job Expenses are payable monthly in proportion to the percentage of the Work accomplished.

3.1.3 DIRECT COST OF CONSTRUCTION. The Direct Cost of Construction for the Project shall not exceed _____ Dollars (\$_____) as shown on the attached Project Estimate, Exhibit C, incorporated herein by this reference. Each item of the Work listed on the Project Estimate shall be bid and the Work awarded in accordance with Paragraph 8.2 hereof. All bidding shall be by sealed bids and all bids shall be opened and read publicly. The Contractor may bid on any or all of the Work described by a line item on the Project Estimate. At the completion of the Work, the Direct Cost of Construction shall include the sum of the total subcontract amounts for all line items accomplished by Subcontractors plus the low bid amount of all Work performed by the Contractor. If upon completion of the Work, the Direct Cost of Construction is less than the amount provided herein, the Direct Cost of

Construction shall be reduced by Change Order in such amount. Reduction of the Direct Cost of Construction shall not cause Contractor's Fee or General Job Expenses to be reduced.

3.2 CONTRACTOR'S FEE. Included in the Contractor's Fee are the following:

3.2.1 Salaries or other compensation of the Contractor's employees at the principal office and branch offices.

3.2.2 General operating expenses of the Contractor's principal and branch offices other than the field office.

3.2.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Project.

3.2.4 Overhead or general expenses of any kind, except as may be expressly included in Subparagraph 3.1.2.

3.2.5 All costs of the Work not recoverable by Contractor as General Job Expenses or Direct Cost of Construction.

3.3 DIRECT COST OF CONSTRUCTION

3.3.1 The term Direct Cost of Construction shall mean costs necessarily incurred in the construction of the Project and paid by the Contractor. Such costs shall include the items set forth below in this Article. The Owner agrees to pay the Contractor for the Direct Cost of Construction up to the amount specified in Subparagraph 3.1.3, as may be increased or decreased pursuant to Article 15. Such payment shall be in addition to the Contractor's Fee and General Job Expense stipulated in this Article 3.

3.3.2 The Direct Cost of Construction shall be the amount of the Project Estimate as shown on Exhibit C, or the amount actually expended on the Direct Cost of Construction as defined herein, whichever is less. The Project Estimate shall contain line item estimates of each major component of the Work, the total of which shall cover all of the Work required for the entire Project, and a line item designated "Restricted Reserve."

3.3.3 The Restricted Reserve may be used for line items for which the lowest bid exceeds the corresponding line items on the Project Estimate or for Work not included in any line item or to expedite the Project prior to expiration of the Contract Time. The Restricted Reserve may not be used for General Job Expenses or Contractor's Fee. No additional General Job Expenses or Contractor's Fee may be charged on expenditures of the Restricted Reserve. All expenditures of the Restricted Reserve must be approved in writing by the Owner, the Architect and the Contractor.

3.3.4 Items of Direct Cost of Construction for the Project:

3.3.4.1 Amounts earned by Contractor for Work described on the Project Estimate for which Contractor was the low bidder.

3.3.4.2 Payments made by the Contractor to Subcontractors for their Work performed on the Project.

3.3.4.3 Cost, including transportation of all materials and equipment purchased by Contractor and incorporated into the Project.

3.3.4.4 Cost of the premiums for all insurance and bond premiums which the Contractor is required by the Agreement to procure for the Project.

3.3.4.5 Sales, use, gross receipts or similar taxes related to the Project imposed by any governmental authority, and for which the Contractor is liable.

3.3.4.6 Permit fees, licenses, tests and royalties paid by Contractor for the benefit of the Project.

3.3.4.7 Cost incurred due to an emergency affecting the safety of persons and property.

3.4 WORK BY CONTRACTOR

3.4.1 All portions of the Work on the Project shall be performed by the lowest responsible and responsive bidder under Subcontracts with the Contractor. The Contractor shall request and receive sealed proposals from Subcontractors and Subcontracts will be awarded after the proposals are reviewed by the Architect, the Contractor and the Owner and approved by the Owner. The Contractor may submit a sealed proposal for any portion of the Work. The proposals shall include the amount of profit and overhead that the Subcontractor would require on Change Orders. The Contractor shall furnish to the Owner copies of Notices of Award and of all Subcontracts, fully executed, within one (1) week after execution.

3.4.2 If the Owner refuses to accept a Subcontractor recommended by the Contractor, the Contractor shall recommend an acceptable substitute and the Guaranteed Maximum Price, if applicable, shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued.

3.5 SOURCE OF FUNDS

3.5.1 The Contractor acknowledges that the sole source of Funds for this Project is the proceeds from _____. Contractor agrees to look solely to the proceeds from these sources for the enforcement of its rights hereunder.

3.5.2 The Contractor is not obligated to agree to any Change Orders that would obligate the Owner to an expenditure in excess of the funds available for the Project.

3.5.3 The Owner agrees not to incur any obligation to pay monies from the Funds described in Subparagraph 3.5.1 herein if such obligation, when combined with all other obligations chargeable against the Funds, exceeds the available Funds and agrees, upon execution of this Contract, to designate a portion of the Funds equal to the Contract Amount herein for use only on this Project.

3.6 CONTRACT TIME. The Contract Time as used and defined in Article 11 herein shall be _____ (_____) calendar days to achieve Substantial Completion and thirty (30) additional calendar days to achieve Final Completion.

3.7 LIQUIDATED DAMAGES. Liquidated damages as used and defined in Article 11 herein shall be _____ Dollars (\$_____) per calendar day for each day the Project is not substantially complete after expiration of the Contract Time for Substantial Completion, and _____ Dollars (\$_____) per calendar day for each day the Project is not finally complete after the expiration of the Contract Time for Final Completion.

ARTICLE 4 GENERAL CONDITIONS

4.1 OWNER, CONTRACTOR, AND ARCHITECT. The Owner, the Contractor and the Architect are those herein defined in this Contract. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SUBCONTRACTOR. See Article 8.

4.3 NOTICE. See Article 10.

4.4 TIME. See Article 11.

4.5 COST. The term "Cost" shall include all charges, costs, losses and expenditures of every kind whatsoever for the Work, or portion thereof, to which reference is made with respect to this term.

4.6 FINISH, SUBSTANTIAL COMPLETION AND COMPLETION DATES. See Article 11.

4.7 CONTRACT DOCUMENTS. See also Articles 1 and 2. A Modification is:

.1 A written amendment to the Contract signed by all parties;

.2 A Change Order properly signed by the parties pursuant to Paragraph 15. 1; or

.3 A Field Order for a minor change in the Work issued by the Architect pursuant to Paragraph 15.4.

A Modification may be made only after execution of the Contract.

4.8 CONTRACT AND GENERAL CONDITIONS. The Contract consist of all the Contract Documents enumerated in Article 2. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral, including the bidding documents. The Contract may be amended or modified only by a Modification as defined in Subparagraph 4.7.

4.9 WORK. The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated, in such construction to complete the Project.

4.10 PROJECT. The Project is the total construction designed by the Architect and depicted and described by the Contract Documents.

4.11 EXECUTION, CORRELATION, INTENTION AND INTERPRETATION OF THE CONTRACT DOCUMENTS

4.11.1 The Contract shall be signed by the Owner and the Contractor. By executing the Contract, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 2.

4.11.2 By executing the Contract, the Contractor represents and warrants that he has examined closely the site, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and has correlated all of his observations with the provisions and requirements of the Contract Documents, including, but not limited to, the details of demolition and construction indicated by the Plans and Specifications. Where discrepancies in quantities, materials, sizes or other conditions exist between the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents; however, the Contractor shall not be responsible for discrepancies that could not be reasonably discovered or anticipated. Should concealed conditions encountered below the surface of the ground be at variance with the conditions indicated by the Contract Documents or differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, then the Contract Amount and/or Contract Time shall be equitably adjusted by Change Order upon claim by either party.

4.11.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in

Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constitute part of the Contract or have any legal or contractual significance.

4.11.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of Drawings or otherwise, will be issued with reasonable promptness by the Architect in accordance with any schedule agreed upon, or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected or memorialized later by Field Order.

4.12 COPIES FURNISHED AND OWNERSHIP

4.12.1 The Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work, as determined by the Architect.

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

4.12.3 It shall be the responsibility of the Contractor to ensure that each Subcontractor and materialman has a current set of Drawings, Specifications and Addenda as required for proper execution of their respective portions of the Work.

ARTICLE 5 ARCHITECT

5.1 DEFINITION

5.1.1 The Architect is the person or organization identified as such in this Contract, and the term "Architect" means the Architect or his authorized representative.

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

5.2 ADMINISTRATION OF THE CONTRACT

5.2.1 The Architect will provide construction administration services pursuant to its separate contract with the Owner, including performance of the functions hereinafter described.

5.2.2 The Architect will be the Owner's representative during construction to the extent described herein until final payment and including the guarantee period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be shown to the Contractor. The Architect will advise and consult with the Owner, and the Owner may issue instructions to the Contractor either directly or through the Architect.

5.2.3 The Architect and the Owner shall at all times have access to the Work wherever it is in preparation and progress.

5.2.4 The Architect shall make periodic visits to the site to become generally familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to perform all inspections required by the 2012 International Building Code and to apprise the Architect of the progress and quality of the Work. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Architect will approve the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.

5.2.6 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor, except where otherwise provided herein. The Architect will promptly render such interpretations as he may deem necessary for the proper execution or progress of the Work.

5.2.7 All claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred initially to the Architect in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Architect or Owner, as the subject of the matter may require, which will be rendered in writing within a reasonable time.

5.2.8 The interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to ensure faithful performance by both the Owner and the Contractor.

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

5.2.10 If a decision of the Architect is made pursuant to the terms of Subparagraph 5.2.7 which goes directly to the Contractor and Owner in writing, and it states that it is final but subject to appeal, no claim, dispute or other matter covered by such decision may be made later than thirty (30) days after the date on which the party making the demand received the decision. Appeal shall be to the District Representative pursuant to the School District Procurement Rules of the Arizona State Board of Education.

5.2.11 The Architect and the Owner each have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will recommend to the Owner that the Owner should require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph 10.8.2, whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty of responsibility of the Architect to the Contractor, any Subcontractor or material supplier, any of their agents or employees, or any other performing any of the Work.

5.2.12 The Architect will review Shop Drawings, Product Data and Samples with reasonable promptness as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive, and take appropriate action thereon.

5.2.13 The Architect will prepare Change Orders in accordance with Article 15. The Architect will have authority to order minor changes in the Work not involving extra cost or an extension of the Contract Time provided they are not inconsistent with the Contract Documents as provided in Subparagraph 15.3.1.

5.2.14 The Architect will conduct inspections to determine the date or dates of Substantial Completion and Final Completion, shall notify the Owner of a date or dates for inspections, and shall issue Certificates of Substantial Completion and of Final Completion. The Architect will receive and review written guarantees, as-built drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.15 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction are as set forth in Articles 1 through 18, inclusive, of this Contract. The Owner may, by agreement with the Architect, increase or diminish the responsibilities and duties of the Architect as he may see fit in his sole discretion. Contractor shall be notified in writing of any change in the responsibility of the Architect.

5.2.16 The Architect will communicate with Subcontractors through the Contractor, except where direct communication with Subcontractors is deemed necessary by the Owner.

ARTICLE 6 OWNER

6.1 DEFINITION

6.1.1 The Owner is the person or organization identified as such in the Contract. The Owner shall appoint an Owner's Representative to communicate and interact with the Contractor. The Owner's Representative shall not be empowered to bind the Owner with respect to the decisions specified in Subparagraph 6.2.4 herein.

6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

6.2.1 The Owner shall furnish all surveys deemed necessary by the Owner to describe the physical characteristics, legal limits and utility locations for the site of the Project.

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

6.2.3 The Owner may issue instructions directly to the Contractor or through the Architect.

6.2.4 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner, and this provision of the Contract shall take precedence over any other term hereof.

6.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 12 and 14, respectively.

ARTICLE 7 CONTRACTOR

7.1 DEFINITION

7.1.1 The Contractor is the person or organization identified as such in this Contract, and the term "Contractor" means the Contractor or his authorized representative.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion or decision of the Architect to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Architect. Contractor retains the right to appeal decisions of the Architect where stipulated in Subparagraph 5.2.7.

7.1.4 After execution of the Contract, changes of brand named, trade named, trade marked or patented articles, or any other substitutions will be allowed only by written order signed by the Architect, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" in the Specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS

7.2.1 By executing this Contract, the Contractor warrants that he has carefully studied and compared the Contract, Drawings, Specifications, Addenda and all other Contract Documents and has determined that the Contract Documents describe a completely buildable Project. The Contractor does not warrant the suitability or feasibility of the Owner's proposed commercial operation of the Project. The Contractor shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions so long as the Architect and the Owner are notified thereof. The Contractor shall do no Work without Drawings, Specifications or written interpretations from the Architect.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the Drawings in preference to what the Drawings may measure to scale. In the absence of figured dimensions, the Architect shall be notified and the figured dimensions obtained.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, levels of grades, walks, driveways or other existing conditions before executing any Work.

7.2.4 The Contractor agrees to comply fully with all applicable federal, state and local laws. This provision shall not be construed to require the Contractor to discover building code deficiencies in the Plans or Specifications. The Contractor agrees to indemnify and hold harmless the Owner and the Architect from all claims of whatever nature involving failure of the Contractor or any of its Subcontractors to comply with any federal, state or local law or ordinance in connection with this Project.

7.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

7.3.2 The Contractor shall hold weekly meetings with Subcontractors to monitor the progress of the Work. A report of the results of each such meeting shall be included in the Weekly Report required by Subparagraph 7.10.2 herein. The Contractor shall inform the Architect at least twenty-four (24) hours in advance of the time for each meeting.

7.4 LABOR AND MATERIALS

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment, machinery, water, heat, utilities, waste and refuse disposal, transportation and any other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work. No materials containing more than 0.1% asbestos, by weight, shall be incorporated into the Project.

7.4.2. Any Work necessary to be performed after regular working hours, on Sundays or legal holidays shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent or otherwise objectionable. If the Architect requests such a removal, he shall notify the Owner in writing of his action. The Contractor shall hold the Owner and the Architect harmless from damages or claims for compensation that may occur in the enforcement of this requirement.

7.5 WARRANTY

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

7.5.2 The warranty provided in this Subparagraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

7.6 TAXES

7.6.1 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed.

7.7 PERMITS, FEES AND NOTICES

7.7.1 All fire protection permits will be paid for by the Contractor. The Owner shall pay for all sewer connection fees, water meters, fire protection water service, gas service and meter, and electric service necessary to provide all permanent utilities for the Project. All temporary utilities for the Project and for Contractor's office shall be provided and paid for by Contractor. Owner is not required to obtain building permits for this Project.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect and the Owner in writing. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect and the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto, including any reasonable attorneys' fees incurred by the Owner in connection therewith.

7.8 PROJECT MANAGER

7.8.1 The Contractor shall employ a competent Project Manager, Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Project Manager and Project Superintendent shall be satisfactory to the Architect and the Owner and shall not be changed except with the prior written consent of the Architect and the Owner.

7.8.2 The Project Manager shall represent the Contractor, and all communications given to the Project Manager shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

7.8.3 The Contractor agrees to assign the following individuals to the Project:

Superintendent

Project Manager

The individuals may not be removed from the Project without the Owner's consent so long as they remain in the employ of the Contractor or a related entity.

7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

7.9.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

7.10 PROGRESS SCHEDULE

7.10.1 The Contractor, immediately after being awarded the Contract, and monthly thereafter or as directed by the Architect, shall prepare and submit for the Architect's review and the Owner's approval a Critical Path Method Schedule and Network Diagram ("CPM Schedule") for the Work or equivalent scheduling method approved by the Owner. Printouts shall be submitted in duplicate to the Owner and shall include activity sequences, logic diagrams on a time scale graph, bar charts on a time scale graph and construction billing forecasts. Printout of early and late starts, trade sorts and expediting reports shall be supplied to the Owner upon written request. Completed activities are to be removed from all printouts so that only activities yet to be completed appear. Whenever significant changes to the Project, such as added or deleted activities, occur, they must be reflected on a revised CPM Schedule to be submitted to the Owner through the Architect. The Contractor's Project Manager and Field Superintendent shall participate in the development and maintenance of the CPM Schedule. The Contractor may submit to the Architect an alternate method of scheduling that is equivalent to the CPM in all material respects. The Architect may approve the use of such alternate method in his reasonable discretion.

7.10.1.1 The Contractor shall be responsible to employ and maintain, on a monthly basis, all information which affects the length of specific activities on the CPM Schedule, times when the Contractor will perform specific jobs and other data relevant to the CPM Schedule as required by the Owner and shall make available at any reasonable time such information for inspection by the Architect and the Owner.

7.10.1.2 All Subcontractors shall concur with the CPM Schedule prior to the award of their Subcontract.

7.10.1.3 If the Contractor's CPM Schedule indicates a completion date ahead of the Contract Completion Date, such date shall be presumed to be the Contractor's most realistic schedule at that time and shall not alter the Finish Date then in force. If, on the other hand, the CPM Schedule indicates a completion date later than the Completion Date then in force, the Contractor must accelerate the Work, at no additional cost to the Owner, to achieve completion within the Contract Time.

7.10.1.4 Correction and updating of the Schedule will be done as often as necessary until the Project is on schedule.

7.10.2 For purposes of determining time extensions resulting from additional work ordered by the Owner, adverse weather or other delays, all float or slack time in the Construction Progress Schedule shall be owned and controlled by the Owner. The Owner shall allow use of such float or slack time by the Contractor as long as such allocation of float or slack time does not adversely affect the Completion Date of the Project. No additional time shall be allowed for claims for delay, whether or not caused by or the fault of the Owner, if such delay is less than the available float or slack time available for the particular task.

7.10.3 The Contractor shall prepare and submit for the Owner's information, review and approval for the duration of the Work a Daily Log in a form acceptable to the Owner. The Daily Log shall be completed daily and submitted to the Owner and the Architect on a weekly basis as a statement and review of the progress of the Work.

7.10.4 The Contractor shall furnish sufficient labor force, plant and equipment to ensure the prosecution of the Work in accordance with the approved Schedule so as to complete the Project within the Contract Time. If the Contractor's prosecution of the Work falls behind the CPM Schedule, the Contractor shall take such steps as may be necessary to regain compliance with the CPM Schedule, including additional labor or services, or work such overtime as may be necessary to bring his operations up to the CPM Schedule. Failure to maintain the CPM Schedule or to take the above steps to regain the agreed CPM Schedule after written notice from the Owner and reasonable opportunity to cure shall constitute default under this Contract.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record all changes made during construction, which shall be available to the Architect and the Owner at all times. Upon completion of the Project, a clean set of Drawings shall be accurately marked to depict the as-built condition of the Project ("as-built drawings"), and these Drawings, along with all record drawings, shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Architect for his record two (2) copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Architect's Specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared or supplied by the Contractor or any Subcontractor, and which illustrate or describe some portion of the Work.

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

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

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

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

7.12.6 The Contractor shall make any corrections required by the Architect to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings and Product Data to revisions other than the corrections requested by the Architect on previous submissions.

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

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

7.12.9 The Owner shall be responsible for removal or other handling of any hazardous materials discovered on the site. If the Contractor discovers during the prosecution of the Work the presence of hazardous materials which must be removed or otherwise disturbed to complete the Work, the Contractor shall immediately notify the Owner in writing of such discovery, which notice shall specify the location of hazardous materials so discovered and the nature of the interference with the Work resulting from the presence of the hazardous materials. The Contractor shall not be required to proceed with any portion of the Work which would require the removal or other disturbance of hazardous materials until the Owner has caused the removal of the hazardous materials or otherwise eliminated the risk of hazardous materials exposure during completion of the Work.

7.13 CUTTING AND PATCHING OF WORK

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

7.13.2 All costs of cutting and repairs necessitated by fault or negligence of the Contractor or Subcontractors of any tier shall be borne by the Contractor.

7.14 CLEANING UP

7.14.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project, as well as all his tools, construction equipment, machinery and surplus materials not specified to be left at the site, and shall clean all glass surfaces and other areas or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

7.14.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Subparagraph 10.6.

7.15 COMMUNICATIONS

7.15.1 The Contractor shall forward all communications to the Architect except where otherwise required herein or otherwise directed by the Owner.

7.16 INDEMNIFICATION

7.16.1 To the fullest extent permitted by Arizona Administrative Code Rule R7-2-1087, the Contractor shall indemnify, hold harmless and defend the Owner, the Architect, the Architect's consultants, and agents and employees of any of them, from and against

claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 7.16.

7.16.2 In claims against any person or entity indemnified under this Subparagraph 7.16 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subparagraph 7.16 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

7.16.3 The obligations of the Contractor under this Subparagraph 7.16 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

7.17 AUDIT OF CONTRACTOR'S RECORDS

7.17.1 The Owner shall have the right to audit the records of the Contractor in connection with the Direct Cost of Construction and General Job Expenses charged to the Owner. The Owner or its authorized representative shall have access to all records, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Subparagraph. The Owner or its authorized representative shall give Contractor reasonable advance notice of intended audits.

7.17.2 "Records" shall consist of the Contractor's books, records, original estimates, estimating worksheets, correspondence, accounting records, written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders), change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Contract. Such records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Contractor or any of his payees pursuant to the

execution of the Contract. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs as they may apply to costs associated with this Contract.

7.17.3 For the purpose of such audits, inspections, examinations and evaluations, the Owner or its authorized representative shall have access to said records from the effective date of this Contract for the duration of the Work and until one (1) year after the date of final payment by the Owner to the Contractor pursuant to this Contract. The Contractor agrees to pay to the Owner within thirty (30) days of demand any credit due the Owner as a result of the final audit.

ARTICLE 8 SUBCONTRACTORS

8.1 DEFINITION

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

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or his authorized representative.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

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

8.2.1 Contractor shall solicit competitive bids for all work not included in Contractor's general conditions and fee. The Subcontractors shall be selected based upon a combination of price and qualifications. The selection shall be a single step selection in which each Subcontractor provides a proposal outlining the Subcontractor's experience and capability to perform the Work and a firm price quotation. In evaluating Subcontractor proposals, the Contractor shall assign a weight of eighty percent (80%) to price and twenty percent (20%) to qualifications. The Contractor shall make recommendations to the Owner for the selection of Subcontractors for each trade.

8.2.2 If, prior to the award of subcontracts for individual bid packages, the Owner has a reasonable and substantial objection to any recommended Subcontractor or Vendor

and refuses in writing to accept such person or organization, the Contractor shall submit a Subcontractor or Vendor acceptable to Owner, and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued.

8.2.3 The Contractor shall not contract with any Subcontractor or any person or organization proposed for portions of the Work designated in the bidding requirements, or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner in writing. The Contractor will not be required to contract with any Subcontractor or person or organization against whom he has a reasonable objection.

8.2.4 The Contractor shall not make any substitution for any Subcontractor or person or organization who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

8.3 SUBCONTRACTUAL RELATIONS

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

- .1 preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.
- .2 require that such Work be performed in accordance with the requirements of the Contract Documents, including, but not limited to:
 - a. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;
 - b. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor, where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;
 - c. obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3;
 - d. require such Subcontractor to submit a lien waiver and release of claim in a form prescribed by the Owner along with each application for payment, which release and waiver shall in turn be given to the Owner and which shall cover all Work done through the previous applications(s); and

e. require such Subcontractor to comply with all laws, indemnify the Owner as provided in Subparagraphs 7.2.4 and 7.16 and agree to the provision of Subparagraphs 3.6 through 3.7.

.3 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14.

8.4 PAYMENTS TO SUBCONTRACTORS

8.4.1 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided in this Contract.

ARTICLE 9 SEPARATE CONTRACTS

9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS

9.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

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

9.2.3 Should the Contractor cause damage to the work or property of any separate contractor on the Project not to be insured under Subparagraph 14.2 herein, the Contractor shall, upon due notice, in writing, promptly settle such other contractor's claim, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall promptly notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises therefrom, the Contractor shall, to the extent of Contractor's liability, promptly pay or satisfy it and shall immediately, upon presentation

to it of a statement thereof, reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

9.2.4 Any costs caused by non-conforming or ill-timed work shall be borne by the party responsible therefor.

9.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS

9.3.1 The Contractor shall do all cutting, fitting or patching of his Work that may be required to fit it to receive or be received by the work of other contractors shown in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Architect.

9.3.2 The Owner shall require that each separate contractor have the same obligations for cutting and patching as are required of the Contractor herein.

9.4 OWNER'S RIGHT TO CLEAN UP

9.4.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Subparagraph 7.14, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 LAW OF THE PLACE

10.1.1 The Contract shall be governed by the law of the State of Arizona and any local jurisdiction in which the Project is located.

10.2 SUCCESSORS AND ASSIGNS

10.2.1 The Owner and the Contractor each binds itself, its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the previous written consent of the Owner, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder without the previous written consent of the Owner.

10.3 WRITTEN NOTICE

10.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended; to the authorized agent of the Owner; the Contractor, with a copy to the Contractor's Project Manager, where appropriate; or if

delivered at or sent by registered or certified mail, to the last business address known to him who gives the notice as appropriate. Notice to the Architect is notice to the Owner except for notice of inconsistencies, errors or omissions in the Contract Documents, request for extensions of time, request for changes in the Contract Amount, appeal of decisions by the Architect or the Owner and notice of claim or legal process. All such notices shall be given to both the Architect and the Owner.

10.4 CLAIMS FOR DAMAGES

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

10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

10.5.1 The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

10.6 OWNER'S RIGHT TO COMPLETE THE WORK

10.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner, after providing seven (7) days written notice to the Contractor and his surety, and the opportunity to cure, which cure must commence within said seven (7) day period, and without prejudice to any other remedy the Owner may have, may proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the Owner's attorneys' fees and other costs.

10.7 ROYALTIES AND PATENTS

10.7.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss on account thereof, including the Owner's attorneys' fees and court costs, except that the Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly informs the Architect, in writing, and receives the Architect's approval prior to starting the Work.

10.8 TESTS

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness and of the date arranged so the Architect may observe such inspection, testing or approval. All inspections or tests required by the Architect or the authority having jurisdiction shall be paid for by the Owner.

10.8.2 The Contractor shall be responsible for all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, and shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

10.8.3 If after the commencement of the Work the Architect determines that any Work requires special inspection, testing or approval which Subparagraph 10.8.1 does not include, he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including the Architect's additional services made necessary by such failure, and the costs of such inspection or testing; otherwise, the Owner shall bear such costs of special inspection.

10.8.4 Required certificates of re-inspections or retesting to secure approval under Subparagraph 10.8.3 above shall be paid for by the Contractor.

10.8.5 If the Architect wishes to observe the inspections, tests or approvals required by this Subparagraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

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

ARTICLE 11
TIME

11.1 CONTRACT TIME, LIQUIDATED DAMAGES AND RELATED PROVISIONS

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Owner or the date of this Contract if no Notice to Proceed is issued, and shall be substantially or finally, as appropriate, completed by the Contractor within the number of

calendar days specified in Article 3 herein (the "Finish Date"). The Contract Time is the period of time from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the Finish Date for Substantial Completion or Final Completion, as appropriate. The date of beginning, rate of progress and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If Substantial Completion as defined in Subparagraph 11.1.3 or the Final Completion Date as defined in Subparagraph 11.1.4 occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the appropriate sum specified in Article 3 herein as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. These amounts are agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. Said amounts may be retained by the Owner from final payment due the Contractor, provided the Contractor does not waive any rights or claims against such amounts withheld should there be a dispute.

11.1.3 The date of Substantial Completion of the Work, or designated portions thereof, is the date certified in writing by the Architect when construction is sufficiently complete in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the Work, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Architect as being "Substantially Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse, the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing the remainder of Work within the Contract Time, including liability for liquidated damages.

11.1.4 The Final Completion Date is the calendar date when all items of the Work as established by the Certificate of Substantial Completion and its respective Punch List are one hundred percent (100%) finished. When the Architect certifies in writing, pursuant to the terms of Subparagraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.2 PROGRESS AND COMPLETION

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

11.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 11.1.1. He shall carry the Work forward expeditiously, uninterrupted and with adequate forces and shall complete it within the Contract Time.

11.3 DELAYS AND EXTENSIONS OF TIME

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause that the Owner reasonably determines may justify the delay, including, but not limited to, acts of God, acts of the public enemy, acts or neglect of the Owner or Architect, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, freight embargoes, unavoidable casualties, labor disputes causing delay in material or equipment deliveries, unusual delays in transportation, or adverse weather detrimental to completion of the Work and materially different than weather normally experienced during the Contract Time as determined on a monthly basis, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this Subparagraph shall relieve the Contractor from any obligation attendant upon him under any of the provisions of this Contract. It is expressly agreed that the Owner's liability for delay from any cause, except delay caused by Owner or Architect, shall be limited to granting a time extension to the Contractor, and there is no other obligation, express or implied, on the part of the Owner to the Contractor.

11.3.2 All claims for extension of time shall be made in writing to the Architect and the Owner. The notice of claim must be submitted no more than twenty (20) days after the occurrence of the delay and a detailed claim, including a breakdown of all known costs involved, shall be submitted no more than twenty (20) days after the occurrence; otherwise, such claim shall be waived. In the case of a continuing cause of delay, only one claim is necessary, although the Contractor shall promptly notify the Architect in writing of the date of the termination of the continuing cause of delay.

ARTICLE 12 PAYMENTS AND COMPLETION

12.1 CONTRACT AMOUNT

12.1.1 The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders.

12.2 SCHEDULE OF VALUES

12.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and the Owner a detailed schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such detail and such form as the

Architect may require, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values may include its proper share of overhead and profit or such overhead and profit may be shown as separate line items and shall be billed in proportion to the percent of the Project completed.

12.3 PROGRESS PAYMENTS

12.3.1 On or about the twenty-fifth day of each calendar month during the course of construction, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require. The Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor, laborer and material supplier.

12.3.2 Payments shall be based on the work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location under such conditions agreed upon in writing by the Architect and the Owner to be transported to the site and installed at a later date.

12.3.3 Material delivered and suitably stored at the site, or at some other agreed upon location by the Contractor, Subcontractors, Sub-subcontractors or material suppliers shall remain the responsibility of the Contractor until incorporated into the Work, shall be insured for the benefit of the Owner, the Contractor and Subcontractor to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the final completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials to be installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all Work, materials and equipment covered by an Application for Payment shall pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first, and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims," except for claims arising out of the Owner's failure to pay as required herein.

12.4 APPROVALS FOR PAYMENT

12.4.1 If the Contractor has made application for payment as above, then not later than the fifth day of the following month, the Architect shall issue his approval of the application and forward his approval of the application to the Owner for such amount as he determines to be properly due, or as provided in Subparagraph 12.5.1, state in writing his reasons for withholding, in whole or in part, the amount applied for.

12.4.2 Approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 5.2.4, and on the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to final completion, and to any specific qualifications stated in his approval of the Application for Payment); and that the Contractor is entitled to payment in the amount approved. In addition, the Architect's final approval for payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 12.6.2 have been fulfilled.

12.4.3 After the Architect has certified an Application for Payment and has promptly forwarded this certification to the Owner for the Owner's approval, the Owner shall make a payment to the Contractor on the basis of the value of the Work actually performed during the preceding calendar month in accordance with Arizona Administrative Code Rule R7-2-1105 and Subparagraph 12.3.2, less the amount of retention specified in Subparagraph 12.4.5 hereof. Such payments shall be made within fourteen (14) days after approval and certification of the Application for Payment by the Architect if the Contractor has agreed to adhere to the provisions of A.R.S. § 41-2577(B), (D) and (F). If the Contractor has properly requested the Owner pursuant to Subparagraph 12.3.1 of this Contract to accept substitute security, the Owner shall pay to the Contractor one hundred percent (100%) of the value of the Work actually performed during the preceding calendar month in accordance with this Paragraph 12. If the Contractor did not request an acceptance of substitute security, made an incomplete or incorrect assignment or made a legally insufficient assignment of substitute security, as determined by Owner or Owner's attorney, the Owner shall retain the amount of such approved Application for Payment specified in Paragraph 12.4.5 hereof as a guarantee of the complete performance of the Contract. Any amounts retained or any securities held by Owner shall be returned to the Contractor within sixty (60) days after the Final Completion Date as specified in Subparagraph 12.6.2 of this Contract, provided the Contractor has by that time duly furnished the Owner any and all documents indicated to be furnished by the close out requirements of the Specifications or required for the proper maintenance and functioning of the Work as a whole. The Contractor shall submit, along with the Application for Payment, lien waivers from each subcontractor, materials or equipment supplier, the aggregate sum of which shall be the amount of the previous progress payment issued to the Contractor. If lien waivers from all subcontractors, materials or equipment suppliers do not equal the aggregate sum of the previous progress payment, the Contractor shall submit the following statement along with the current progress payment request: "I hereby certify as General Contractor on this Project that I have paid all subcontractors, materials or equipment suppliers for the Work provided in conjunction with this Project for which I have previously received payment."

12.4.4 In his Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Architect or the Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims and to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim submitted unless such claim was submitted in writing at the time and in the manner required herein.

12.4.5 The Owner shall retain ten percent (10%) of the amount of each application for payment as insurance of proper performance of the Contract. Once the Contract is fifty percent (50%) complete, one-half of the retention then held shall be paid to the Contractor provided the Contractor is making satisfactory progress and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) complete, five percent (5%) of the amount of each subsequent application for payment shall be retained providing the Contractor is making satisfactory progress on the Project. If at any time the Owner determines that the Contractor is not making satisfactory progress, then the Owner may retain ten percent (10%) of all subsequent applications for payment.

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

12.5 PAYMENTS WITHHELD

12.5.1 The Architect or the Owner may decline to approve an Application for Payment or portion thereof and the Architect may withhold his certificate in whole or in part if, in his opinion, he is unable to make the representations to the Owner as provided in Subparagraph 12.4.2. The Architect may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of

- .1 defective work not remedied,
- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount,
- .4 damage to another contractor,
- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 failure to carry out the Work in accordance with the Contract Documents.

12.5.2 When the grounds in Subparagraph 12.5.1 are removed, or in the case of 12.5.1.3, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

12.6 SUBSTANTIAL COMPLETION AND FINAL PAYMENT

12.6.1 When the Contractor determines that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Architect and the Owner shall prepare for submission to the Contractor one punch list of items to be completed or corrected on the Project, or designated portion thereof. The punch list shall be the basis for determination of the Date of Final Completion. Any item on such list shall be completed or corrected before the Final Completion Date. The failure to include any items on such punch list does not relieve the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Architect, on the basis of an inspection, determines that the Work is substantially complete, he will then prepare a Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance.

12.6.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection and, when the Architect finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work completed under the Contract fully performed, and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11. 1. 4, then, and only then, the Architect shall promptly state in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor is payable. The Architect's written notice required by this Subparagraph shall state the Date of Final Completion.

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

- .1 unsettled claims,
- .2 faulty or defective Work,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any guarantees required by the Contract Documents.

12.6.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor, except claims made but not settled.

12.6.5 No earlier than three (3) weeks before the expiration of the guarantee period specified in Subparagraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Owner and/or the Architect, in company with the Contractor, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

12.6.6 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims. If a Change Order extending the time for Substantial Completion is issued within ninety (90) days of the Contract Time specified for Substantial Completion, the Contractor shall be entitled to payment of retention based upon the date of Substantial Completion disregarding the change in Contract Time resulting from the Change Order, providing that all other conditions to the payment of retention have been satisfied. Where retention is paid prior to Final Completion, the Owner may retain an amount equal to two hundred percent (200%) of the value of the Work that remains incomplete.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PRECAUTIONS AND PROGRAMS

13.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2 SAFETY OF PERSONS AND PROTECTION OF PROPERTY

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

1. all persons engaged in the Work and all other persons who may be affected thereby;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

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

13.2.4 All damage or loss to any property, except to the extent insured under Subparagraph 14.2 herein, caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or to the acts or omissions of the Owner or the Architect, or anyone employed by either of them, or for whose acts either of them may be liable and not attributable to the fault or negligence of the Contractor.

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

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

13.3 EMERGENCIES

13.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provisions of the Contract Documents.

ARTICLE 14 INSURANCE

14.1 CONTRACTOR'S INSURANCE

14.1.1 The Contractor shall procure and shall maintain during the entire life of this Contract the insurance of the kind and amount specified in Subparagraphs 14.2.4, 14.3 and 14.4 herein, except as otherwise provided herein. The cost of all such insurance shall be borne by the Contractor. The cost of any deductible associated with any insurance provided hereunder shall be borne by the Contractor.

14.1.2 The Contractor shall not commence work under this Contract until he has obtained and secured the Owner's approval of all insurance required herein, nor shall the Contractor allow any Subcontractor to commence work on his Subcontract until the insurance required of the Subcontractor has been so obtained and approved by Contractor.

14.2 PROPERTY INSURANCE

14.2.1 The Contractor shall procure and maintain property insurance upon the entire Project property on a replacement cost basis. The insurance shall include the Owner and the Subcontractors and Sub-subcontractors as additional insureds as their interest may appear, and shall insure the Project and adjacent structures against loss from the perils of fire, and shall be extended to include "all risk" coverage, including, but not limited to, theft, vandalism, malicious mischief, collapse, flood, earthquake and damage resulting from faulty workmanship or materials. The Contractor will increase limits of coverage, if necessary, to reflect estimated replacement cost and will be responsible for any deductible.

14.2.2 If the Owner finds it necessary to occupy or use a portion or portions of the Project prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement of the policy or policies. The insurance provided in Subparagraph 14.2.1 shall not be cancelled or lapsed on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

14.2.3 The Contractor shall procure and maintain such boiler and machinery insurance as may be required or that the Contractor deems necessary. The insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

14.2.4 The Contractor shall purchase and maintain such insurance as will protect the Owner and the Contractor against loss of use of the Owner's interest in materials in transit or off-site and not installed due to those perils insured pursuant to Subparagraph 14.2. 1.

14.2.5 The Contractor shall file a copy of the policies required of the Contractor in this Subparagraph 14.2 with the Owner before an exposure to loss may occur. Copies of any subsequent endorsements will be furnished to the Owner. The Owner will be given

thirty (30) days notice of cancellation, non renewal, or any endorsements restricting or reducing coverage.

14.2.6 The Contractor shall cause insurers providing the policies required in Section 14.1 to waive all rights of recovery against the Owner and its agents, officials and employees.

14.2.7 Contractor shall provide, and cause Subcontractors to provide, certificates of insurance from insurers acceptable to the Owner prior to commencement of the construction of the Work as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated, reduced or materially changed until after sixty (60) days prior written notice has been given to the Owner. Certificates of insurance and any notice of cancellation or material change should be sent to Owner.

Certificates evidencing the completed operation liability coverage will be required for three (3) years past the date the Owner accepts its Certificate of Occupancy for the entire Work.

14.2.8 The Owner reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

14.2.9 All insurance policies required by this Section 14.1 shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best Company, and be authorized to do business in the State of Arizona.

14.3 WORKERS' COMPENSATION INSURANCE

14.3.1 The Contractor shall procure and shall maintain during the life of this Contract Workers' Compensation Insurance for all his employees to be engaged in work on the Project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance. In case any class of employees engaged in work on the Project under this Contract is not protected under the Workers' Compensation Insurance, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of those of his employees as are not otherwise protected.

14.4 CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

14.4.1 General liability insurance with a minimum combined single limit of Three Million Dollars (\$3,000,000.00) each occurrence applicable to the Work and an annual aggregate limit of liability of Three Million Dollars (\$3,000,000.00) applicable to the

construction of the Work. The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed operations coverage shall extend for five (5) years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provisions.

14.4.2 Automobile liability insurance with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to vehicles assigned to or used in the construction of the Work.

14.2.3 Contractor's equipment insurance covering owned, non-owned, leased equipment used in connection with the construction of the Work.

14.5 PROOF OF CARRIAGE OF INSURANCE

14.5.1 Certificates of the insurance required in this Article 14 shall be filed with the Owner prior to commencement of Work, in a form satisfactory to the Owner. All insurance policies, other than workers compensation, shall list the Owner as additional named insureds as provided herein and shall include a clause to the effect that the policy shall not be cancelled or reduced, restricted or limited until thirty (30) days after the Owner has received written notice, evidenced by a return receipt of a registered or certified letter, of the proposed action.

ARTICLE 15 CHANGES IN THE WORK AND CLAIMS

15.1 CHANGE ORDERS

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, delay, reconstruction or other revisions, the Contract Amount and/or the Contract Time being adjusted accordingly under the applicable conditions of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner, the Architect and the Contractor, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract Amount and the Contract Time may be changed only by Change Order.

15.1.3 The cost or credit, as the case may be, to the Owner resulting from a change in the Work shall be determined in one or more of the following ways as mutually agreed:

.1 by mutual acceptance of a lump sum properly itemized in a form acceptable to the Architect and the Owner;

- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
or
- .3 by actual cost and a mutually acceptable fixed or percentage fee covering overhead and profit.

The total amount of combined overhead and profit allowed the Contractor on any Change Order, regardless of the method of computation of the price, and whether increase or decrease, shall not exceed fifteen percent (15%) of the Direct Cost of the Change Order Work when the Work is performed by the Contractor. The total amount of combined overhead and profit allowed the Contractor on any Change Order, regardless of the method of computation of the price, and whether increase or decrease, shall not exceed ten percent (10%) of the Direct Cost of the Change Order Work when the Work is performed by any level of Subcontractor, and the total combined overhead and profit allowed Contractor for overhead and profit of all Subcontractors and Sub-subcontractors, if any, shall not exceed fifteen percent (15%) of the Direct Cost of the Change Order Work. The costs of bond premiums, insurance and sales tax shall be added, in that order, after calculation and addition of overhead and profit. The overhead and profit margin shall include, without limitation, the costs of any additional supervision and project management, including the Contractor's and any Subcontractor's job superintendent, project manager, estimator, field office support, home office support, small tools and all other general job expense items.

15.1.4 Under Subparagraph 15.1.3.3 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting, together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, as confirmed by the Architect. When both additions and credits are involved in any one change, the allowance for Contractor's Fee and General Job Expenses shall be figured on the basis of the net increase, if any.

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

15.2 CLAIMS FOR ADDITIONAL COST OR TIME

15.2.1 If the Contractor is entitled, under the terms of the Contract, to make a claim for an increase in the Contract Amount, Contract Time or any other claim, he shall give the Architect and the Owner written notice thereof within twenty (20) days after the Contractor has become aware of an occurrence of an event giving rise to such claim. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Subparagraph 13.3.1. All claims shall be

made as provided in Subparagraph 12.4.4 within the time limits prescribed herein, and no such claim shall be valid unless so made. To be effective, any change in the Contract Amount or Contract Time resulting from such claim shall be approved by the Owner and authorized by Change Order.

15.2.2 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Subparagraph 4.11.5,
- .2 any order by the Architect or the Owner to stop the Work pursuant to Subparagraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Subparagraph 15.3,

the Contractor shall make such claim as provided in Paragraph 15.2.

15.3 MINOR CHANGES IN THE WORK

15.3.1 The Architect or the Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and such changes shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

15.4 FIELD ORDERS

15.4.1 The Architect or the Owner may issue written Field Orders which interpret the Contract Documents or which order minor changes in the Work in accordance with Subparagraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such Field Orders promptly. Such orders shall be effected by written order and such orders shall be binding on the Owner and the Contractor.

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK

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

16.1.2 If any other Work has been covered which the Architect has not requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay

such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and, in that event, the Owner shall be responsible for the payment of such costs.

16.2 CORRECTION OF WORK

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

16.2.2 If, within the time provided in Subparagraph 18.1 or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor, at his sole expense, shall correct it promptly after receipt of a written notice from the Owner to do so, unless the Owner has previously given the Contractor a specific written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Subparagraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner, unless removal has been specifically waived in writing by the Owner.

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

16.2.5 If the Contractor does not remove such defective or non-conforming work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after receipt of a statement of charges therefor, the Owner may, upon ten (10) additional days written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional architectural services, costs of storage, transportation and sale and any attorneys' fees incurred by the Owner in connection therewith. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner and all attorneys' fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming work, the Owner may correct it in accordance with Subparagraph 10.6.

16.2.7 The obligations of the Contractor under this Subparagraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

16.3.1 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 17 TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE CONTRACTOR

17.1.1 If the Work, in whole or substantial part, is stopped for a period of one hundred twenty (120) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor, or if the Work should be stopped for a period of thirty (30) days due to the Owner's failure to make payment thereon, then the Contractor may, upon seven (7) days written notice to the Owner and the Architect, terminate this Contract and recover from the Owner payment for all work executed, for the Contractor's Fee and General Job Expenses earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, for cancellation charges on existing obligations of the Contractor, and for a reasonable profit.

17.2 TERMINATION BY THE OWNER

17.2.1 If the Contractor files or has filed against it any petition in bankruptcy, or if he makes a general assignment for benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accordance with the Progress Schedule and Contract Time, or if he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to uninterruptedly complete the Work once he has the Notice to Proceed, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and/or his surety seven (7) days written notice and Contractor has failed to commence to cure, terminate the employment of the Contractor and take possession of the site and all materials, and may finish the Work by whatever

method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

17.2.2 If the unpaid balance of the Contract Amount is exceeded by the costs of finishing the Work, including compensation for the Architect's additional services, attorneys' fees and all other costs incurred by the Owner in completion of the Contractor's obligations, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Architect.

ARTICLE 18 GENERAL PROVISIONS

18.1 TWO-YEAR GUARANTEE

18.1.1 The Contractor shall guarantee all Work under this Contract to be in accordance with the Contract Documents against defects of material and workmanship for a period of two (2) years from the date of Substantial Completion; provided, however, that those items of the Work specified as having longer guarantees shall be guaranteed for the period specified. The Contractor's guarantee excludes damage or defect caused by abuse of the Owner or third parties, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

18.1.1.1 The Contractor shall be responsible for the total cost of repairing and restoring to a new condition any Work found not in compliance with the Contract Documents or any defective Work, at no cost to the Owner, subject to the limitation of Subparagraph 16.1.2 and provided that the Owner's use did not create the defect or non-compliant condition.

18.1.1.2 In any case where the subject matter of the non-compliance or defect relates to Work done under a subcontract between the Contractor and any Subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this Subparagraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such non-complying or defective Work to a new condition, at no cost to the Owner.

18.1.1.3 In any case where the non-complying or defective Work has been brought to the attention of the Contractor by the Owner by written communication and the Contractor fails or refuses to commence and diligently pursue correction of the defect within five (5) days after such notice, the Owner may elect, without precluding any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever reasonable manner it deems appropriate, and the Contractor shall be liable to the Owner for the total reasonable cost thereof, including, by way of example only, any architectural and legal fees related to effecting the repair.

18.1.2 Material and workmanship made good through compliance with such guarantee shall be guaranteed until the expiration of the original two year period, unless the same item requires correction on more than two occasions, in which case the material or workmanship shall be guaranteed for one year from the last correction that occurs during the original two year guarantee. Such guarantee period shall begin on the date the replaced material and Work is certified as acceptable in writing by the Architect.

18.2 SANITATION

18.2.1 The Contractor shall provide and erect portable toilets, at points to be determined by the Owner, for the use of employees on this Project. Following the period of necessity for such facilities, they shall be removed and all evidence thereof effaced.

18.3 JOB OFFICE

18.3.1 A job office as approved by the Architect shall be provided on the building site. The Contractor shall install at his own expense a job telephone for use of the Contractor and a pay phone for the use of all trades in connection with the Work.

18.4 USE OF PREMISES

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect and shall not unreasonably encumber the premises with materials or equipment.

18.4.2 The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

18.5 LEGAL FEES AND COSTS

18.5.1 The party substantially prevailing shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any term of this Contract.

18.6 SEVERABILITY

18.6.1 In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

18.7 CASH ALLOWANCE

18.7.1 The Contractor agrees that he has included in the Contract Amount all cash allowances, if any, specified in the Contract Documents, and shall cause the Work so covered to be undertaken by such contractors as the Owner may direct, the Contract

Amount being adjusted in conformity therewith. The Contractor agrees that the Contract Amount includes Direct Cost, General Job Expenses, Contractor's Fee, taxes and fees. No demand for any sum other than those included in the Contract Amount shall be allowed in connection with the Cash Allowance and only direct costs may be charged against the Cash Allowance. If the cost, when determined, is more than or less than the allowance, the Contract Amount shall be adjusted accordingly by change order.

18.8 IMMIGRATION LAW COMPLIANCE

18.8.1 The Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal and State immigration laws and regulations related to the immigration status of its employees. Contractor shall obtain statements from its subcontractors of every tier certifying compliance and shall furnish the statements to the Owner upon request. These warranties shall remain in effect through the term of the Contract, and the Contractor and its subcontractors of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Contract. I-9 forms are available for download at USCIS.GOV.

18.8.2 The Owner may request, and the Contractor agrees to furnish, verification of compliance from the Contractor or its subcontractors of any tier performing work pursuant to this Contract. Should the Owner reasonably believe or discover that the Contractor or its subcontractors of any tier are not in compliance, the Owner may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor or its subcontractors. All costs necessary to verify compliance are the responsibility of the Contractor.

18.9 COMPLIANCE WITH FINGERPRINTING REQUIREMENTS

18.9.1 Contractor shall comply with the requirements of Arizona Revised Statutes Section 15-512(H) regarding the fingerprinting of employees of Contractor, subcontractors of every tier and vendors who are likely to have unsupervised contact with pupils as determined by the Owner, in its sole discretion. Contractor shall be responsible for payment of all costs associated with compliance with A.R.S. §15-512(H).

18.10 CANCELLATION

18.10.1 This Agreement is subject to cancellation by the Owner for violation of the provisions of Arizona Revised Statutes Section 38-511.

18.11 NO ISRAEL BOYCOTT

18.11.1 In accordance with A.R.S. § 35-391.01, Contractor shall certify that it is not and shall not at any time during the performance of this Contract participate in a boycott of Israel.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first above written.

OWNER:

VAIL UNIFIED SCHOOL DISTRICT NO. 20

By: _____

Printed Name: _____

Its: _____

Date: _____

CONTRACTOR:

By: _____

Printed Name: _____

Its: _____

Date: _____