## Construction Contract

This agreement is made on the date written above our signatures between
Contractor Name: _____ (Contractor) and
Owner Name: _____ (Owner).

## Contractor

Contractor Name: _____
Address: _____
Address: _____
City: _____, State: _____ Zip: _____
Work Phone Number: _____
Fax Number: _____
Email Address: _____
License Number: _____
Contractor Name: _____ is licensed as a corporation in the state of
State: _____.
Contractor Name: _____ will be referred to as Contractor throughout this agreement.

## Owner

Owner Name: _____
Address: _____
Address: _____
City: _____, State: _____ Zip: _____
Day Phone Number: _____
Cell Phone Number: _____
Fax Number: _____
Email Address: _____
Owner Name: _____ is organized as a corporation in the state of
State: _____.
Owner Name: _____ will be referred to as Owner throughout this agreement.

## Owner's Representative

Owner will be represented by Name of representative
_____ (Owner's Representative) as described in this agreement.

Name of representative: _____
Address: _____
Address: _____
City: _____, State: _____ Zip: _____
Day Phone Number: _____
Cell Phone Number: _____
Fax Number: _____
Email Address: _____
Name of representative _____ will be referred to as

Owner's Representative throughout this agreement.

**The Construction Site**

Legal description: _____

_____

_____

City: _____, California Zip: _____



_____ _____

## I. Project Description

A. For a price identified below, Contractor agrees to complete a new commercial or industrial building (identified as the Project in this agreement) for Owner.

## II. Contract Price

A. In addition to any other charges specified in this agreement, Owner agrees to pay Contractor $_____ for completing the Work described as the Project.

## III. Alternative Pricing Options

A. At the option of Owner, the following adjustments may be made to the Project:

1. Add $_____ for
_____
_____
_____.

2. Subtract $_____ for
_____
_____
_____.

## IV. Allowances

A. This Contract Price includes allowances for items to be selected later by Owner.

1. $_____ for _____.
   Installation will be by Contractor at a cost included in the Contract Price
   The allowance price covers the cost of:
   - Materials
   - Taxes
   - Delivery

2. $_____ for _____.
   Installation will be by others at a cost included in the allowance price

## V. Payment Per Unit of Work

A. In addition to other charges specified in this agreement, Owner agrees to pay Contractor $_____ per_____ of _____.

1. If the actual quantity of _____ is more or less than _____, the Contract Price will be increased or reduced by $_____ per _____ of _____ more or less than _____.

## VI. Scheduled Start of Construction

A. Work under this agreement will begin within 1 Calendar Days after the following contingencies have been met.

1. Complete Plans and Specifications have been approved and initialed by both Owner and Contractor.

2. Owner has obtained a construction loan or other financing acceptable to Contractor.

3. Owner has obtained all architectural approvals from subdivision or neighborhood authorities.

4. Owner has furnished Contractor with evidence of ownership of the property satisfactory to Contractor.

5. All appropriate building permits have been issued.

6. Contractor has received written notice from the lien holder or the title company insuring lien holder's security interest in the property that all documents required to be recorded prior to the commencement of construction have been properly recorded.

7. The contract has been signed by Owner and Contractor.

## VII. Scheduled Completion of Construction

A. Work under this agreement will be Substantially Completed within _____ Calendar Days after the date construction begins.

## VIII. Documents Incorporated

A. The Glossary of Terms which follows our signatures is incorporated into this contract as though included in full as part of this agreement.

B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

**1. Plans**
Plans dated ____/____/____
Consisting of _____ sheet(s)
Prepared by _____
Last changed on ____/____/____
And further identified as _____

**2. Specifications**
Specifications dated ____/____/____
Consisting of _____ sheet(s)
Prepared by _____
Last changed on ____/____/____
And further identified as _____

**3. Detailed Drawings**
Detailed Drawings dated ____/____/____
Consisting of _____ sheet(s)
Prepared by _____
Entitled _____
And further identified as _____

**4. Shop Drawings**
Shop Drawings dated ____/____/____
Consisting of _____ sheet(s)
Prepared by _____
Entitled _____
And further identified as _____

**5. Schedule**
Schedule dated ____/____/____
Consisting of _____ sheet(s)
And further identified as _____

## IX. Ownership of Plans

A. All Plans, Drawings, Specifications and other documents prepared by or for Owner for use under this agreement are the property of Owner and remain the property of Owner. Plans, Drawings and Specifications, whether in paper or electronic form, prepared for use in construction under this agreement shall not be modified or used on any other project without written consent of Owner. Contractor shall hold harmless and Indemnify Owner from and against any and all Claims, actions, suits, costs, damages, losses, expenses and attorney's fees arising out of use of the Project Plans, Drawings, or Specifications for any purpose other than construction to be completed under this agreement. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Plans, Specifications and Drawings as required for construction under this agreement. All copies made under this license shall bear a notice showing Owner as copyright holder. All Plans, Drawings, Specifications and other documents prepared for use in construction under this agreement are to be returned to Owner at completion of the Work or termination of the contract. Contractor may retain one record set of the Plans, Drawings and Specifications. All other sets shall be accounted for by Contractor and returned to Owner. Submittal or distribution of Project Plans, Drawings or Specifications to meet Official Regulatory Requirements is not to be construed as publication in derogation of the rights of Owner.

## X. Plans on Site

A. Contractor will keep a full set of Project Plans available on-site to authorized personnel during the period of construction.

## XI. Documents Supplied to Contractor

A. Owner will furnish to Contractor at no cost:

1. A full set of Plans and Specifications for all trades in electronic format.

2. Contractor will distribute Contract Documents as required by Subcontractors.

## XII. Scope of Work

A. Contractor shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the Project in compliance with the Contract Documents.

B. Contractor is responsible for coordination of the various trades and deliveries of equipment, materials and supplies to minimize interference which could delay the Work or pose a hazard to life or property. Contractor shall be responsible for allocation of tasks between trades and will be the final authority on location and routing of equipment and storage of materials on the Job Site.

C. Contractor will ensure that Subcontractors, their agents, and employees adhere to these Contract Documents. Contractor accepts responsibility for all Work performed under this contract, including Work performed by employees of Subcontractors. Contractor will settle disputes among Subcontractors and between Contractor and Subcontractors so that disagreements do not delay completion of the Work or affect quality of the Work.

D. Contractor shall make a best effort to adopt and implement policies and practices designed to minimize Work stoppages, slowdowns, disputes or strikes. Except as may be specifically provided elsewhere in this or a separate agreement, Contractor is not liable to Owner for damages suffered by Owner as a result of Work stoppages, slowdowns, disputes or strikes. Contractor shall allocate labor tasks among the various trades in accordance with local custom, rules, jurisdictional awards, regulations, and decisions, regardless of any classification by the Contract Documents.

E. Contractor shall provide on the Job Site during the period of construction a temporary chemical toilet or water closet which shall be serviced no less than weekly. Upon completion of the Project, Contractor will remove temporary toilet facilities from the site.

F. Contractor shall provide temporary elevators and lifts as may be required by construction personnel, including Subcontractors, Material Suppliers, Inspectors, and Representatives of Owner. Elevators and lifts will comply with all federal, state and local Laws and ordinances in effect at the Job Site. Upon completion of the Project, Contractor will dismantle and remove temporary elevators and lifts.

G. Contractor shall develop and present to Owner for approval (which shall not be withheld unreasonably), a site logistics plan drawn to scale, showing proposed secure and fenced areas, locations and types of temporary barricades, material storage and staging areas, property entrances used for material deliveries, and special material or equipment storage Requirements. This plan will include a description and proposed location for any temporary office, storage trailer, sanitary facilities, and parking for construction personnel.

## XIII. Submittals

A. Shop Drawings will indicate in detail all parts of the building components, Installation details, and coordination with Work of other trades or other Contractors. Shop Drawings for structural steel, timbers and pre-cast concrete will include engineering calculations, fabrication details and erection Drawings that show physical characteristics, dimensions, shapes, inserts, attaching points and methods, and other information required for manufacture, assembly and erection, in compliance with the Contract Documents.

B. Approval by Owner's Representative does not relieve Contractor of responsibility for compliance with the Contract Documents except as follows: If a Submittal does not comply with Contract Documents, Contractor will attach to the Submittal, prior to approval, a written request for variation showing the change in Contract Price and Contract Time, if any, that will result from the variation. If Owner's Representative approves a Submittal which includes a written request for a variation and which requires a change in the Contract Price or Contract Time, Owner's Representative will issue a contract Modification confirming the change. If Owner's Representative approves a Submittal with a written request for a minor variation which does not require a change in the Contract Price or Contract Time, no contract Modification is needed. A minor variation is anything which does not materially alter the quality or performance of the Work. Approved variations are subject to all terms of this agreement and without prejudice to any rights granted to Owner's Representative under a Surety Bond.

C. Contractor is entitled to expect that corrections to Submittals by Owner's Representative be clearly noted and easily understood so that prompt resubmission is possible without further instructions from Owner's Representative.

D. Owner's Representative will review Submittals and notify Contractor of approval or rejection within _____ Calendar Days of receipt.

E. Owner's Representative will review Submittals of Contractor for conformance with Requirements of the Contract Documents and will approve or take other appropriate action upon those Submittals.



_____ _____

Owner's Representative will advise Contractor of any errors or omissions which Owner's Representative may detect during this review. Submittals approved by Owner's Representative become additions to the Contract Documents and can be relied on by Contractor in completing the Work. Nothing in any approved Submittal shall be interpreted to limit Contractor in selection of the means, method, technique, sequence or procedure of construction.

## XIV. Record Documents

A. Contractor will note on a record set of Project Drawings any Work done that is not shown on the original Plans and not described in other Contract Documents. The record set of Project documents will be delivered to Owner at the same time as final payment is requested.

## XV. Job Site Safety

A. Contractor will at all times take all reasonable precautions for the safety of employees and the public at the Job Site and will comply with all applicable safety Laws and regulations of federal, state, and local authorities (including building codes) and safety Requirements of Owner.

## XVI. Hazardous Materials Used in Construction

A. Except as provided elsewhere in the Contract Documents, Contractor is responsible for all Hazardous Materials brought to the Job Site by Contractor or Subcontractors.

## XVII. Hazardous Materials Discovered on Site

A. Except as provided elsewhere in the Contract Documents, Owner is responsible for all Hazardous Materials discovered on the Job Site so long as those materials were not brought on the Job Site by Contractor, Subcontractors, or anyone directly or indirectly employed by them. Nothing in this paragraph shall relieve Contractor from liability for negligence in handling or removing Hazardous Materials as required under the terms of this agreement.

B. Except as provided in the Contract Documents or as agreed by mutual consent, Contractor shall not be required to perform Work relating to asbestos, polychlorinated biphenyl (PCB), radioactive material, toxic mold or any other Hazardous Material.

C. Owner shall defend, Indemnify and hold harmless Contractor from and against all loss, liability, claims, costs, damage and economic detriment of any kind whatsoever, or expense (including attorney's fees) that arises out of or results from the discovery or existence of Hazardous Material on the Job Site, whether or not identified in the Contract Documents, provided such loss, liability, costs, damage and economic detriment is not the result of any negligent act or omissions of Contractor, Subcontractors or anyone directly or indirectly employed by them. Indemnification by Owner under this paragraph shall apply even if Owner is in no way responsible for the loss to Contractor.

## XVIII. Compliance with Law

A. Contractor and Owner mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.

B. If Contractor observes that Drawings, Specifications, or other Contract Documents do not comply with applicable Law, Contractor shall promptly notify Owner or Owner's Representative of the variance. Any changes made to the Contract Documents as a result of this notice shall be handled in the form of a Change Order under this agreement.

C. Contractor shall bear none of the cost of correcting Work completed according to Contract Documents but not in compliance with Law if Contractor did not know that Contract Documents or

instructions from Owner or Owner's Representative did not comply with the Law.

D. If Law enacted after the Contract Date changes the Scope of Work under this agreement, Contractor and Owner will execute a Change Order adjusting the Contract Price and Contract Time to accommodate the change in the Scope of Work.

## XIX. Survey

A. Owner will employ an engineer or licensed land surveyor to establish lines, points and levels adequate to lay out alignment and elevations for the Project. Owner is responsible for accuracy of the survey marks and other site information supplied to Contractor. Contractor shall promptly notify Owner of any discrepancies found in survey markers or other site information supplied by Owner.

B. If Contractor suffers any loss or delay due to inaccuracy of the Job Site survey supplied by Owner, Contractor shall be entitled to an adjustment in the Contract Price and Contract Time, including damages for delay, shutdown and startup expense, lost profits and consequential damages.

C. Contractor shall maintain and preserve all survey monuments, markers, hubs and stakes on the Job Site until authorized or required to remove them. If such marks are lost, moved or destroyed while still needed to complete the Work, Contractor will have the marker reset by a licensed land surveyor or engineer at no cost to Owner.

D. Owner will provide Contractor with all relevant site information available to Owner, such as information about soil conditions, easements, utility lines (whether on or adjacent to the site), floodplain maps, fault maps, and existing improvements. These are not Contract Documents and Owner makes no warrant on the accuracy of information provided to Contractor under the terms of this paragraph.

## XX. Layout

A. Contractor shall be responsible for alignment and elevation of the Work and will set grade stakes, batter boards, and other working points, lines and elevations required to complete the Project as described in the Contract Documents.

## XXI. Permits and Fees

A. Contractor shall secure all permits, licenses and renewals required by government authority to complete construction of the Project. If permits are required for Subcontracted Work, Subcontractors will secure those permits. Owner shall assist Contractor in responding to requests for information from the permit-issuing authority. Contractor shall provide Owner a copy of each permit, license and renewal issued by government authority for the Project.

B. Owner will pay the building permit fee, Plan check fee, and charges levied by government for testing, Inspection and Re-Inspection of the Project.

C. Except as provided elsewhere in this agreement, Owner will pay all fees and application charges imposed by government authority, including, but not limited to, grading permit fees, drainage permit fees, traffic control charges, thoroughfare charges, impact fees, special district fees, sewer fees, water fees, planning fees, school fees, elevator permit fees, charges for temporary access or use of the public right of way, and charges for document processing, hearings, and certifications. Owner will also pay all fees and application charges imposed by any association of property owners having authority over the Job Site.

D. Except as provided elsewhere in this agreement, Owner will pay all application fees and connection charges imposed by utility companies or government agencies for bringing service to the Job Site, and

for connecting gas, water, electricity, phone, cable, sewer, and drainage lines.

E. Except as provided elsewhere in this agreement, Owner will secure all approvals for the Project that are required by government authority, including planning, easements, remediation, environmental, and zoning approvals.

## XXII. Taxes

A. If any federal, state or local tax rate increases or if any new federal, state or local tax is imposed, whether by Law, regulation, or interpretation, between the Contract Date and Substantial Completion, the Contract Price shall be increased by the additional tax levied on Contractor, but only to the extent that the change in rate or new tax could not have been reasonably foreseen on the Contract Date.

## XXIII. Temporary Utilities

A. Contractor shall pay all costs associated with use of temporary utilities on the Job Site during construction, including application fees, permits, engineering, and metered service for water, electric power, heating and cooling. Temporary utility systems provided by Contractor shall be designed and installed to protect the public and construction personnel and conform with applicable Laws and Regulations.

B. Utility services shall be re-listed in the name of Owner on the Calendar Day following Substantial Completion, and Owner shall pay for utility services after that date.

## XXIV. Permanent Utilities

A. Owner shall secure and pay for Installation, connection, and modification of permanent electric, water, phone, cable, sewer and gas service as required for the completed Project.

## XXV. Job Cleanup

A. Contractor shall regularly remove from the Job Site and storage areas all surplus material, waste and debris resulting from the Work. Construction debris shall be removed to a legal refuse collection site with disposal or recycling fees paid by Contractor. At completion of the Work, Contractor shall, in addition, remove from the Job Site all tools, equipment and scaffolding brought to the Job Site by Contractor or Subcontractors. At Substantial Completion, exposed finishes of windows, doors, floors, walls, ceilings, fixtures and trim shall be cleaned and free of grime, stains, over spray, dirt and dust.

B. Contractor shall provide a trash disposal facility on the Job Site for use by construction personnel. The on-site trash facility provided by Contractor shall be of an appropriate size for the Project and placed in a location approved by Owner. All construction debris shall either be placed in the trash facility provided by Contractor or hauled to a legal disposal site, at the discretion of Contractor. When any trash container provided by Contractor is full, contents shall be removed to a legal disposal facility at the expense of Contractor.

## XXVI. Project Sign

A. Contractor shall fabricate and erect a Project sign designed by Owner's Representative and bearing the name of the Project, Prime Contractor, principal Subcontractors, designers, consultants, lead lender, a short Project description, and expected Completion Date. Location of the Project sign will be designated by Owner or Owner's Representative. Contractor may erect directional signs at the Job Site with approval of Owner with respect to size, style and location. Directional signs may bear the name of Contractor and a directional symbol. No other signs will be permitted except by permission of Owner.

## XXVII. Project Superintendent

A. Contractor shall employ a competent Superintendent and any necessary assistants or alternates, all approved by Owner or Owner's Representative. The Superintendent shall not be changed except with the consent of Owner or Owner's Representative, unless the Superintendent is discharged by Contractor. The Superintendent shall have authority to represent Contractor in all matters relating to the Project. Communications with the Superintendent shall have the same force and effect as direct communication with Contractor.

B. The Project Superintendent shall be able to read, write, and communicate in the English language.

## XXVIII. Emergency Response

A. In any Emergency threatening the health, safety or life of persons or serious and immediate damage to property, Contractor shall use best efforts and full discretion without special instruction or authorization from Owner to prevent the threatened damage, injury or loss. When directed by any authority, Contractor shall provide Emergency assistance without special instruction or authorization from Owner. However, Contractor shall notify Owner promptly if Contractor believes any significant changes in the Work or variations from Contract Documents have been caused by the Emergency response.

B. Provided Contractor is not responsible for the Emergency condition and provided the additional cost to Contractor for the Emergency response is not covered by insurance or recoverable from others, Contractor shall be granted a Change Order to compensate for the Emergency response.

## XXIX. Owner's Responsibilities

A. Owner affirms that Owner has the right to enter into this agreement and has the right to contract for construction of the Project on the Job Site. Owner shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

B. Owner will ensure that Owner's Representative responds in writing and with reasonable promptness to written requests from Contractor for (1) interpretation of the Plans or Specifications, or (2) other information relevant to completion of the Work. Contractor is authorized to rely on written responses from Owner's Representative.

C. Owner shall have sole responsibility to secure financing for the Project and shall pay all fees, charges, or other costs of such financing, including Inspection fees charged by any lender. The nonperformance of any lender shall not affect the obligation of Owner to Contractor. Owner hereby authorizes and directs any lender on the Project to furnish Contractor with full information on undisbursed loan proceeds when requested by Contractor.

D. Owner will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by Contractor or Subcontractors except as provided under this agreement.

## XXX. Construction by Others

A. Owner shall neither hire nor retain Separate Contractors, Subcontractors, employees or agents of Owner to perform Work on the Job Site while Work is being done under this agreement by Contractor.

## XXXI. Authority of Owner's Representative

A. Owner's Representative has authority to administer the contract, make construction decisions on behalf of Owner, and is the primary authority on issues of compliance with the Drawings and



_____ _____

Specifications, quality of workmanship, materials used, manner of performance, and rate of progress on the Project.

B. After the Contract Date, Owner shall make no change in the responsibilities or authority of Owner's Representative without consent of Contractor.

C. Owner's Representative shall have the right to visit the Project and view Work in progress at any time. Any Defective Work found or suspected, either as the result of a site visit or otherwise, shall be reported promptly to Contractor. No actions taken or statements made during site visits shall relieve Contractor of obligations described in the Contract Documents.

D. Communication between Contractor and Owner shall be initiated through Owner's Representative unless direct communication is required by Law or Contract Documents. Unless otherwise authorized by Contractor, communications between Owner's Representative and Subcontractors or Material Suppliers shall be through Contractor. Communications by Contractor and Subcontractors with Separate Contractors shall be through Owner's Representative. Communications between Contractor and consultants to Owner's Representative shall be through Owner's Representative.

E. Owner's Representative shall have the authority to reject and order removed any portion of the Work which does not conform to the Contract Documents.

F. Owner's Representative shall have authority to conduct Inspections in connection with Beneficial Occupancy and to determine the dates of Substantial Completion and Final Completion.

## XXXII. Representations by Contractor

A. Contractor shall use skill and attention to complete the Work in a timely manner consistent with the Contract Documents.

B. Owner has reported to Contractor all conditions known to Owner which may not be apparent to Contractor and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

## XXXIII. Disclaimer by Owner, Reliance by Contractor

A. Owner has provided Contractor with information on subsurface or concealed conditions at the Job Site. Except to the extent that Contractor knows this information to be false, Contractor is entitled to rely on the accuracy of this information.

## XXXIV. Discrepancy Between Plans and Field Conditions

A. Contractor is not a Design Professional and has no obligation to find discrepancies between Job Site conditions and representations or Requirements in the Contract Documents.

B. Contractor shall not be liable for discrepancies between representations or Requirements in the Contract Documents and conditions at the Job Site unless Contractor knowingly fails to report a discrepancy, in which case Contractor shall be liable for additional costs incurred as a result of failure to give prompt notification.

C. If any concealed structure, water, power, waste, drain or gas line is uncovered or revealed during construction which is not as indicated in the Contract Documents or is inconsistent with information provided by Owner, Contractor shall promptly, and before any such structure or line is disturbed or damaged (except in an Emergency), notify Owner or Owner's Representative. Contractor shall submit a

Claim for a Change Order which covers the additional cost incurred as a result of such structure, water, power, waste, drain, or gas line uncovered or revealed during construction.

## XXXV. Differing Site Conditions

A. Contractor shall promptly, and before conditions are disturbed, give a written notice to Owner of (1) Subsurface or latent physical conditions at or near the Job Site which differ materially from those indicated in the Contract Documents, and (2) Unknown physical conditions at or near the Job Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character called for in the Contract Documents. Owner shall investigate the site conditions promptly after receiving notice. If the conditions do materially so differ and cause an increase or decrease in the cost to Contractor or the time required for performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

B. Both natural and man-made physical conditions, including asbestos, pollution and mold, may form the basis for a Claim for equitable adjustment for differing site conditions.

C. If concealed or unanticipated conditions require a change in the Plans or Specifications, Owner will issue a Change Order modifying the Contract Documents, Contract Price and Contract Completion Date, if any.

D. Anything in this contract notwithstanding, Contractor is entitled to rely on express or implied representations concerning site conditions made by Owner and those employed by Owner regardless of whether those representations are made in Contract Documents or otherwise.

## XXXVI. Access from Other Property

A. When the Work requires access by Contractor through adjacent public or private property or closure of a public right of way, Owner shall secure the appropriate permit, license or temporary easement, and give notice as may be required by Law.

B. Owner agrees to Indemnify and hold Contractor harmless from Claims by owners of adjacent private property and from Claims of government resulting from access by Contractor through public property or closure of a public right of way.

## XXXVII. Access to Site by Owner

A. While Work is in preparation or in progress, Contractor shall, at all times, provide access to the Job Site to Owner and those authorized by Owner. Contractor shall provide safe and proper facilities for such access. Owner and those authorized by Owner shall have the right to inspect all Work done and all materials, equipment and fixtures furnished, installed, or stored in and about the Job Site.

B. If Owner or anyone authorized by Owner is on the Job Site while Work is in preparation or progress and causes a delay or disruption of the Work or does damage to the Work, for which Contractor is in no way responsible, Contractor shall be entitled to extra compensation or an extension of time, or both.

## XXXVIII. Use of the Site

A. Owner has agreed to furnish all required rights to use the land upon which the Work is to be constructed. Owner will identify any encumbrances or restrictions related to use of the land furnished and Contractor agrees to comply with those encumbrances or restrictions. If Owner fails to furnish the land, rights of way, or easements when required, Contractor may make a Claim for extra compensation, additional time, or other relief.



_____ _____

B. Except as otherwise provided in the Contract Documents, Contractor may erect temporary facilities, such as storage sheds, shops and offices on the Job Site. Such temporary buildings shall remain the property of Contractor and shall be removed at the expense of Contractor at completion of the Work.

C. Owner shall designate a construction entrance which Contractor shall use for all delivery of materials and equipment and which shall be used by all construction personnel.

## XXXIX. Payment Plan

A. Owner will pay to Contractor the Contract Price in installments consisting of progress payments and a final payment on completion of the Work.

## XL. Progress Payments

### A. Schedule of Progress Payments

1. Each progress payment will cover Work done during the pay period. The amount of each progress payment will be based on the value of Work completed. If a progress payment would be due on a legal holiday, the payment will be made on the last business Day before that holiday.

2. Progress payments will be made monthly on the 1st of each month.

### B. Processing of Progress Payments

1. No later than 7 Calendar Days before a progress payment is due under the terms of this agreement, Contractor shall submit to Owner's Representative an application for payment itemizing charges for Work done in previous pay periods and for Work done in the current pay period, including adjustments to the Contract Price resulting from approved Change Orders or other changes required by Owner. Within a reasonable time after receipt of a request for payment, Owner's Representative will inform Contractor and Owner that a Certification of Payment has been issued covering all, part, or none of the payment request. If any portion of an application for payment is not approved, Contractor shall be entitled to payment on the portion approved.

2. Once a Certificate of Payment is issued by Owner's Representative, Owner is required to issue payment to Contractor in the amount approved and in compliance with the terms of this contract.

3. The amount of each progress payment shall be based on the value of construction put in place during the payment period as calculated from an approved Schedule of Values.

### C. Approval of Progress Payments

1. Contractor acknowledges that Owner's Representative may decline to approve the portion of any request for payment which includes: (1) Charges based on Defective Work not remedied, or (2) Work by a Subcontractor or materials from a Supplier for which Contractor is withholding payment pending resolution of a dispute.

2. Contractor acknowledges that Owner's Representative may decline to approve all or any portion of a request for payment (1) After legal Claims relating to the Project have been filed and served on Contractor or Owner, (2) After Contractor is delinquent paying Subcontractors, employees or Material Suppliers, (3) After failure of Contractor to make contributions required by state or federal Law or by collective bargaining agreements, (4) If it becomes apparent that the Work cannot be completed for the unpaid balance of the Contract Price or finished by the Contract Completion Date, (5) If Contractor is responsible for substantial damage to Work of Owner or a Separate Contractor, or (6) If payment would exceed the total liability of Owner for the Project after deducting a reserve for liquidated damages reasonably expected.

3. Promptly on disapproval of all or any portion of a payment request, Owner shall provide to Contractor written notice of denial identifying for each line item denied: (1) The amount withheld, (2) The Defect or reason for withholding, (3) The remedial action required to cure the Defect, and (4) Documentation needed to reestablish an obligation of Owner for payment. Within 7 Calendar Days after Contractor cures the Defect and provides appropriate documentation that is approved by Owner's Representative, Owner shall pay Contractor within 7 Calendar Days for the value of line items thus approved.

4. Unless otherwise provided in the Contract Documents, applications for payment may include, at the option of Contractor, itemized charges for materials and equipment not yet incorporated in the Work but delivered and suitably stored on the Job Site. Application for payment for stored materials and equipment shall include a bill of sale or other confirmation that stored materials and equipment are the property of Owner.

5. Each application for payment shall be submitted on the form approved by Owner.

## D. Discharge of Liens and Payment of Subcontractors

1. Contractor warrants that, upon payment, Owner shall receive clear title to all Work identified in the application for payment, free and clear of all liens and Claims, including Claims of Subcontractors, employees or Material Suppliers. Contractor also agrees that this vesting of title in Owner does not impose any obligation on Owner or relieve Contractor from any obligation under this contract. Contractor shall remain responsible for damage to or loss of both the Work and stored materials until Final Completion.

2. Contractor warrants and guarantees that no Work, materials, or equipment covered by a request for payment has been acquired by Contractor or by any other person performing the Work or furnishing materials or equipment for the Project subject to an agreement under which an interest therein, or an encumbrance thereon, has been retained by seller or otherwise imposed by Contractor.

3. Contractor shall furnish, with each application for payment, executed waivers of liens from Contractor and each Subcontractor and Material Supplier to the Project in the amount of the application for payment. Waivers of liens shall be in a form satisfactory to Owner, title insurer, and lenders. In lieu of a waiver of lien, Contractor may submit a Bond by a Surety company licensed to do business in the state of California guaranteeing satisfaction of any lien rights claimed by Subcontractors, Material Suppliers, or employees.

4. Contractor shall disburse funds received from Owner among Subcontractors and Material Suppliers in proportion to the Work done and materials received for the Project during the pay period. Contractor shall retain or hold back payment to Subcontractors in no greater proportion than the proportion of Retainage in payments made by Owner to Contractor. By separate agreement, Contractor shall require each Subcontractor on the Project to make payments to Sub-subcontractors and Material Suppliers in a similar manner.

## E. Schedule of Values

1. No later than 30 Calendar Days before the first progress payment is due, Contractor shall submit a draft Schedule of Values for approval by Owner's Representative. When approved, the Schedule of Values shall be the basis for calculating amounts due in progress payments. The units installed or the estimated percent completed during the pay period multiplied by the unit value equals the payment earned during the pay period.

2. When requested by Owner's Representative, Contractor shall supply documentation to support

figures in the draft Schedule of Values. When requested by Owner's Representative, Contractor shall submit a revised draft Schedule of Values that overcomes the reasonable objections of Owner's Representative. The draft Schedule of Values is approved as submitted if Owner's Representative makes no objection within 10 Calendar Days of submission. Contractor shall make no application for progress payment until a Schedule of Values has been approved by Owner's Representative.

3. Contractor shall draft a revised Schedule of Values for approval by Owner's Representative when, in the opinion of Owner's Representative, changes to the Contract Documents or the Contract Price require a revised Schedule of Values.

4. Costs which Contractor may incur prior to the start of construction, such as Bonds, permits and mobilization expense, may, at the option of Contractor, be included on a separate Schedule of Values and submitted for approval with a request for expedited consideration. When approved by Owner's Representative, this separate Schedule of Values becomes a supplement to any other Schedule of Values that may be approved and is a valid basis for an immediate application for payment.

## XLI. Retainage

A. Progress payments to Contractor shall be reduced by the amount set out in this contract for Retainage. Except as otherwise provided in this agreement, all Retainage shall be released to Contractor no later than 30 Calendar Days after Final Completion of Project.

B. Except as otherwise provided in this agreement, Owner shall retain _____ percent of the total amount due on progress payments.

C. After 50 percent of the Work is complete, and if progress is satisfactory in the sole opinion of Owner, and with the consent of Sureties providing bonds for the Project, Retainage on progress payments shall terminate. Thereafter, the remaining progress payments shall be paid in full without Retainage so long as, in the sole opinion of Owner, satisfactory progress is being made in the Work.

D. When any Subcontractor has finished Work in a manner that complies with the Contract Documents, Owner may release to Contractor all Retainage attributable to Work performed by that Subcontractor. No such release of Retainage shall be made without written approval from each Surety company furnishing a Bond for either Contractor or the Subcontractor affected.

E. Retainage shall be released to Contractor upon Substantial Completion of the Project except for (1) An amount equal to 200 percent of the estimated value any Work remaining to be completed on a Punch List developed under the terms of this contract, and (2) Any amount required to ensure compliance with Warranty provisions of this contract. All Retainage shall be released to Contractor on Final Completion.

F. Contractor shall disburse pro-rata the full amount of Retainage due Subcontractors and Material Suppliers within 10 Calendar Days after receipt of Retainage from Owner.

G. No Retainage will be withheld under this contract on tender by Contractor of a Retainage Bond satisfactory to Owner and naming Owner as obligee, issued by a Surety company authorized to issue Surety Bonds in the state of California, in the amount of the Retainage to be released and conditioned upon Substantial Completion of the Work by Contractor.

## XLII. Contract Allowances

A. If the cost to Contractor for a contract allowance item is more or less than the allowance price, the Contract Price shall be adjusted for the difference by a Change Order.

## XLIII. Interest

A. Payments due and not paid under the Contract Documents shall bear interest from the date payment is due at a monthly rate of _____ percent.

B. Payment of interest does not abrogate or replace any other rights Contractor may have under this agreement.

## XLIV. Grounds for Withholding Payment

A. Owner may withhold payment due Contractor for Defective Work which has not been corrected in compliance with terms of this agreement.

B. Owner may withhold payment due Contractor on the filing of a legal Claim against Contractor by any third party if the Claim relates to the subject matter of this contract and (1) May result in a lien on the Project, or (2) May result in a judgment for damages against Owner. Filing of a legal Claim shall not constitute grounds to withhold payment if Contractor has insurance coverage which would prevent loss to Owner from the legal Claim made.

C. If Owner withholds any payment under terms of this agreement, Owner will notify Contractor in writing of the amount being withheld, the reason why payment is withheld, and what must be done to release the payment otherwise due.

D. Grounds entitling Owner to withhold certain amounts due Contractor under this agreement shall not relieve Owner from the obligation to pay Contractor other amounts then due and shall not relieve Owner of the obligation to pay in full when the reason for withholding payment no longer exists.

## XLV. Final Payment

A. Contractor will submit an application for final payment and will notify Owner's Representative when the Work has been completed. Owner's Representative will issue a certificate of completion on determination that the Project is complete and in compliance with the Contract Documents. When the certificate of completion is issued, the entire unpaid balance of the contract amount, including any Retainage, is payable to Contractor.

B. Making of final payment constitutes waiver of all Claims by Owner against Contractor except those Claims previously made in writing and delivered to Contractor and those obligations otherwise provided by this agreement or by operation of Law.

C. The acceptance of final payment by Contractor constitutes a complete and unconditional waiver and release of any and all Claims by Contractor of whatever nature, and regardless of whether they are then known or unknown, and a complete and unconditional release of Owner, and every person for whom Owner is responsible, for any and all matters related to the contract or otherwise, except those Claims which have been made in writing and identified by Contractor as not having been settled at that time.

D. Owner has no obligation to make final payment until unconditional waivers of lien in a form satisfactory to Owner, lenders and Sureties have been received from Contractor, Subcontractors, vendors, tradesmen, and all Material Suppliers with lien rights on the Project. Contractor may furnish a Bond satisfactory to Owner in lieu of waivers of lien.

E. Owner has no obligation to make final payment until all as-built Drawings, certificates, warranties and job records required by the Contract Documents have been submitted to Owner.



_____ _____

## XLVI. Changes in the Work

A. Except as required by changes in the Prime Contract between Owner and Contractor, no change to this contract (including Modification, clarification, interpretation or correction of the Plans or Specifications) shall be made without mutual agreement and a written Change Order signed by Contractor and Owner identifying the change, the cost of the change, and the effect on Project Schedule, if any.

B. Any change in Plans, Specifications or Contract Documents necessary to conform to existing or future Laws, codes, ordinances or regulations shall be considered Extra Work.

C. Changes in the Work required due to defects or inconsistencies in Plans or Specifications or other Contract Documents shall be considered Extra Work.

D. The charge for Extra Work shall be the normal selling price Contractor charges for Similar changes on other jobs.

E. No Claim for payment for Extra Work and no claim for additional time to complete the Work shall be recognized under this agreement without a written Change Order or a notice of Claim. Failure by Contractor to assert the right to a written Change Order or a Claim within 30 Calendar Days after beginning Work on a change in the Work shall constitute waiver by Contractor of the right to additional compensation and waiver of the right to additional time to complete a change in the Work. No act or omission of either Contractor or Owner shall be interpreted as waiver of the Requirement for a written Change Order or notice of Claim, nor shall any Claim that Owner has been unjustly enriched support a Claim for a constructive Change Order. The provisions of this paragraph are the essence of this agreement.

F. Failure of Contractor and Owner to agree on the terms of a Change Order shall be resolved under the provisions of this agreement which cover Claims and disputes.

G. Should Contractor and Owner fail to agree promptly on the terms of a Change Order, Contractor shall be paid, pending resolution of the dispute, the portion of the cost of the change not in dispute, including the costs of time and materials required to execute the change. Payments required under this paragraph shall be made as the Work progresses, concurrently with progress payments.

## XLVII. Cooperation of the Parties

A. Owner and Contractor acknowledge that open communication and cooperation will be required to complete the Project on time, as estimated, and in compliance with the Contract Documents. Contractor and Owner each agree to identify a representative who will be available to resolve minor problems, answer questions and reach mutually acceptable solutions. The individuals identified by Contractor and Owner shall try to reach informal agreement on problems as they arise but are under no obligation to do so.

B. Both Contractor and Owner pledge that their relations will be conducted with courtesy and consideration in an environment characterized by mutual respect. Owner pledges to respond promptly to requests by Contractor for guidance, assistance and payments when due and agrees to extend to Contractor the deference and latitude a dedicated professional deserves. Contractor pledges to commit the skill and resources required to complete the Project in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of Contractor for dependability and professionalism.

## XLVIII. Job Conferences

A. Prior to the start of construction, Contractor and Owner shall hold a pre-construction conference to identify: (1) The people who will be involved in construction of the Project, their chain of authority, addresses, telephone numbers, fax numbers and email addresses to be used when requesting information or giving notices, (2) The proposed construction Schedule, (3) Procedures for approving Shop Drawings, product data and Submittals, (4) Procedures for handling Change Orders, (5) Construction Site Requirements such as dust and erosion control, storm water management, Project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic, (6) Safety Requirements and procedures, (7) Quality control, testing, Inspections and notice Requirements, (8) Inspection procedures, and (9) The handling of payment requests.

## XLIX. Value Engineering

A. Contractor is encouraged to submit in writing to Owner detailed value engineering proposals which will accelerate completion, reduce cost to Owner, or which offer significant benefits (including long-term benefits) to Owner. On acceptance of any value engineering proposal, Owner and Contractor shall execute a detailed Change Order identifying the change and value of the direct cost saving or enhanced value to Owner. Owner shall pay to Contractor 50 percent of the direct cost saving or enhanced value identified in any Change Order that results from a written value engineering proposal submitted by Contractor. In the absence of any such value engineering proposal, Contractor is deemed to have accepted construction details provided by the Contract Documents as adequate to produce satisfactory Work.

B. Contractor may restrict the right of Owner to make use of any value engineering proposal or make any use of supporting data for a value engineering proposal by appending to the proposal the following language: No part of this value engineering proposal shall be disclosed, duplicated or used for any purpose other than to evaluate this proposal. Once accepted by Owner by issuance of a Change Order, Owner shall have the right to duplicate, use, and disclose any data or information in this value engineering proposal in any manner and for any purpose whatsoever.

C. Value engineering proposals must not delay completion of the Project or adversely affect the quality of design or construction or the operation or maintenance of the Project.

## L. Defective Work

### A. General Requirements

1. On written notice from Owner's Representative, Contractor shall promptly remove from the Job Site all Work or materials not in compliance with the Contract Documents, whether or not such rejected Work or materials are incorporated in the Project. Contractor shall promptly repair or replace such rejected Work or materials at no cost to Owner.

### B. Rejected Work - Contractor's Obligations

1. Contractor shall bear all expenses related to the correction of rejected Work and replacing rejected materials, including the expense of making good all Work of Contractor, Owner and Separate Contractors destroyed or damaged by the corrections and replacements.

### C. Rejected Work - Contractor's Rights

1. If Contractor disagrees with a decision on rejection of Work or rejection of materials, Contractor may proceed with corrections under protest and invoke the provisions of this agreement which cover dispute resolution. If such rejection of Work or materials is found to be without merit or with no

adequate foundation, Contractor shall be entitled to a Change Order for Extra Work and Owner shall pay all costs associated with corrections completed under protest.

2. If Contractor disagrees with a decision on rejection of Work or materials, Contractor is entitled to an expedited resolution of the issue under the provisions of this agreement which cover dispute resolution. Pending resolution of this dispute, the obligation of Contractor to make correction is suspended. The Contract Time, if any, is extended for the period the dispute remains unresolved.

## LI. Call-Backs

A. On written notice from Owner within 30 Calendar Days after Substantial Completion (the call-back period), Contractor shall promptly repair or replace any portion of the Work which becomes Defective due to faulty materials or workmanship.

## LII. Warranty

Contractor warrants that the Work shall be free of Defects due to faulty material or workmanship for the period specified in this agreement.

### A. General Requirements

1. Except as otherwise provided in this agreement, the warranty period shall begin from the date of Final Completion.

2. Work done by Contractor in compliance with warranty provisions of this agreement does not extend the period of the warranty.

3. Contractor shall deliver to Owner all warranties provided by vendors and manufacturers of materials and equipment used to complete the Project. Contractor shall have no obligation under warranties provided by others except to render any assistance that Owner may require in enforcing the terms of those warranties.

4. Except as provided in this agreement, and to the extent permitted by Law, Contractor disclaims all warranties, whether express or implied, whether of fitness for purpose, merchantability, habitability or workmanlike completion.

5. Failure of Owner to give notice of a breach of warranty within the warranty period constitutes a waiver of the right to repair or replacement by Contractor.

6. To make a warranty Claim under this agreement, Owner must send a clear and specific written complaint to Contractor at the following address within 60 Calendar Days of discovering Defects, unless otherwise specified in the list of items covered under this warranty. Contractor shall make repairs, replacements and corrections promptly and at no expense to Owner.
Contractor Name: _____
Address: _____
Address: _____
City: _____, State: _____ Zip: _____

### B. Exclusions from Warranty

1. The warranty provided by this contract does not cover any of the following items or conditions:

I. Damages to personal property or bodily injury.

II. Damages or losses that result from soil movement that is covered by insurance or that is compensated for by legislation.

III. Insect damage.

IV. Damage or losses that result from overloading of any floor, wall, ceiling, or roof beyond the design capacity.

V. Damages caused or made worse by:

A. Changes, additions, deletions, or any other alterations made to any part of the structure by anyone other than Contractor after the warranty term begins.

B. Loss that results from failure of Owner to take timely action to mitigate or minimize damage.

2. Contractor has no liability for incidental or consequential damages from breach of any warranty provided by this agreement insofar as the loss claimed is covered by insurance of Owner or for which Owner has a right of recovery from any other party.

### C. Basic **Warranty Coverage**

1. It is a breach of warranty if any material or design furnished, or workmanship performed by Contractor or any Subcontractor or Material Supplier, is found to be defective during the first year.

### D. Warranty on Major Structural Damage

1. It is a breach of the major structural damage warranty where there is actual physical damage to designated load-bearing portions of the structure caused by the failure of such designated portions to perform to their load-bearing functions to the extent that it makes the structure unsafe, uninhabitable, or unsanitary during the first 7 years. The following items are designated load-bearing portions:

I. Foundation Systems and Footings

II. Beams

III. Girders

IV. Lintels

V. Columns

VI. Walls and Partitions

VII. Floor Systems

VIII. Roof Framing Systems

## LIII. Contractor Claims

A. If Contractor claims that any instruction, Drawing, act or omission of Owner or any representative of Owner, or any agency of government, increases costs to Contractor, requires extra time or changes the Scope of Work, Contractor shall have the right to assert a Claim for such costs or time.

## LIV. Notice of Claims

A. No Claim by Contractor shall be considered unless Contractor provides Owner or Owner's Representative with a notice that there will be a Claim for additional compensation or an extension of time. This notice of Claim shall be made no less than 5 Calendar Days after Contractor recognizes or should have recognized that circumstances exist which support such a Claim. The notice of Claim shall include: (1) The date of the notice, (2) The date the basis for the Claim was discovered, (3) The circumstances that support the Claim, and (4) The estimated additional cost to Owner or additional time

required to complete the Project.

B. If the Claim involves Extra Work, Contractor shall maintain detailed records which show each expense incurred, including payroll records and receipts for Subcontracted Work, materials and equipment. These detailed records shall be made available to Owner for verification while Work subject to the Claim is being performed.

C. The amount Claimed by Contractor shall be calculated in accord with provisions in this contract on charges for Extra Work.

## LV. Arbitration

A. Any controversy or Claim arising out of or relating to this contract or contract warranty or the breach thereof which cannot be resolved by mediations shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

B. Two copies of the demand for arbitration and attachments and the related fee shall be filed with the appropriate regional office of the American Arbitration Association. Copies of the demand and attachments shall be given to all other Parties to the dispute. The demand for arbitration shall be made within a reasonable time after the Claim or dispute has arisen, and in no event after the date when institution of legal or equitable proceedings based on such Claim or dispute would be barred by the applicable statute of limitations.

C. Contractor and Owner agree to include in each contract for construction or design services on the Project a clause which requires that disputes under that contract be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules.

D. Any representative of Owner or consultant to Owner or Contractor or any Subcontractor to Contractor on the Project shall have the same rights in any arbitration proceeding as are afforded by arbitration rules to Contractor and Owner. If more than one demand for arbitration is made by a Party with respect to the Project, all such Claims shall be consolidated into a single arbitration unless the Parties otherwise agree in writing.

E. If a Claimant in arbitration recovers less than 50 percent of the amount demanded in arbitration, Contractor and Owner agree that the Claimant shall pay all costs in arbitration, including the arbitrator's fees and the attorney's fees of the opposing Party.

## LVI. Insurance

### A. Certificates of Insurance

1. Contractor shall provide to Owner a certificate of insurance for each insurance policy required by this agreement. These certificates shall list Owner as the certificate holder.

2. Certificates of insurance shall be issued on a standard form such as ACORD Form 25-S or the equivalent.

3. Contractor shall permit no Subcontractor to begin Work on the Project until Owner has received certificates of insurance demonstrating that the Subcontractor has coverage of a like kind and with comparable limits to insurance coverage required of Contractor under this agreement.

### B. Waivers of Subrogation

1. Owner and Contractor waive all rights against each other for damages caused by fire or other perils

to the extent covered by insurance except such rights as may exist to the proceeds from insurance held by Owner as trustee. Contractor shall require Similar waivers in Subcontracts for the Project.

### C. Insurance Details

1. If insurance policies meeting the Requirements of this contract are not generally available to Contractor, Contractor may provide substantially Similar coverage and shall so notify Owner in writing.

2. Contractor may satisfy the policy limits set by this contract through any combination of underlying and excess liability (umbrella) insurance so long as the total coverage is not less than the policy limits specified in this contract. Any excess liability (umbrella) insurance coverage provided by Contractor must be written on an occurrence basis, offer coverage at least as broad as the underlying insurance, and have concurrent effective dates. Excess liability (umbrella) insurance provided by Contractor shall provide additional insured endorsements, blanket contractual coverage, and punitive damages coverage (unless prohibited by Law).

### D. Liability Insurance

1. As an alternative to including Owner as an additional insured under a comprehensive general liability policy, Contractor may provide an Owner's and Contractor's Protective Liability Policy (OCP Policy). If Contractor is unable to procure the minimum amounts of insurance in a single policy, Contractor may provide required policy limits through a combination of a primary OCP Policy and one or more excess policies. Owner shall be the named insured on the OCP Policy and, if applicable, the excess policy. Each policy shall be endorsed to include each Subcontractor of every Tier as the Contractor designated in the declarations.

2. Minimum Contractor's liability coverage shall be: $1,000,000 combined bodily injury and property damage single occurrence limit, annual aggregate limit of $2,000,000, products and completed operations aggregate limit of $1,000,000, personal and advertising injury aggregate limit of $1,000,000.

### E. Builder's Risk Insurance

1. Owner shall provide builder's risk insurance covering property damage to the Project during the construction period. Owner accepts the risk of damage to the Work during construction and agrees to Indemnify and hold harmless Contractor and Subcontractors at any Tier from losses resulting from uninsured damage to the Work prior to final payment under this agreement.

2. Builder's risk insurance shall include a loss payable provision naming Owner as loss payee. Owner shall have the power to adjust and settle Claims resulting from builder's risk insurance.

3. Policy limits for builder's risk coverage shall be no less than the completed replacement value of the Project including the value of Change Orders.

## LVII. Liability for Damages

### A. Contractor's Liability for Damages

1. Contractor shall have no liability for damage to or loss of Owner's personal property left on the Job Site unless such damage or loss is the direct result of intentional or negligent acts by Contractor.

## LVIII. Indemnity

A. Contractor shall defend, Indemnify, and hold harmless Owner and all officers, employees, agents, and consultants of Owner from and against all and any losses, liability, Claims, costs, damages and economic detriment of any kind whatsoever, or expense (including attorney's fees) that arises out of or

results from performance of Work under this agreement provided such loss, liability, costs, damage and economic detriment is attributable to bodily injury, sickness, disease or death, or to injury or destruction of property (other than the Work itself) caused by the negligent acts or omissions of Contractor, a Subcontractor, or anyone directly or indirectly employed by them, or whether caused by or contributed to by Owner, unless caused by the sole negligence of Owner.

B. Indemnification of Owner is limited to the extent of insurance coverage required to be carried by Contractor under this agreement.

C. Indemnification under this agreement shall not exceed any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## LIX. Payment and Performance Bonds

A. Contractor shall furnish to Owner within 10 Calendar Days after execution of this agreement a Performance Bond guaranteeing faithful performance of the contract. The penal sum of the Performance Bond shall be the Contract Price plus the value of Change Orders issued. Premiums for the Performance Bond shall be paid by Contractor. The Performance Bond shall be in effect 10 Calendar Days after this contract is signed by Owner and shall expire on completion of Work under this contract, including any warranty period.

B. Contractor shall furnish to Owner within 10 Calendar Days after execution of this contract a Bond guaranteeing payment of all obligations of Contractor arising under this contract. The penal sum of the Payment Bond shall be the Contract Price plus the value of Change Orders issued. Premiums for the Payment Bond shall be paid by Contractor. The Payment Bond shall be in effect 10 Calendar Days after this contract is signed and shall continue in force until the time permitted under Law for the filing of mechanics' and materialmen's liens on the Project has passed.

C. Contractor shall require each Subcontractor performing Work valued in excess of 5 percent of the Contract Price to furnish to Owner and Contractor proof of issuance by a licensed Surety of both Performance and Payment Bonds for Work to be done by that Subcontractor on the Project. Amount of each Bond shall be equivalent to the value of the Subcontract.

## LX. Interpretation of the Contract

A. Section headings and paragraph numbers have been included in this contract to make reference easier and in no way limit, define, or enlarge the terms, scope, or conditions of this contract.

B. Except as otherwise provided in this contract, Owner and Contractor intend that this contract be interpreted in accord with the *Restatement of Law, Contracts*, published by the American Law Institute. Specifically: All parts of the Contract Documents should be interpreted together, and conduct of the Parties should be interpreted as a manifestation of intention, and specific provisions should be interpreted as qualifying the meaning of the general provisions.

## LXI. Dealing With Plan Defects

A. At any time, Contractor may request an interpretation or clarification of the Contract Documents from Owner or Owner's Representative. Owner or Owner's Representative shall reply with a written interpretation, clarification, or detailed instructions within a reasonable time.

B. Contractor will rely on the Contract Documents as the final authority on what is included in the Project. The Contract Documents were created to identify the labor, material and equipment required for proper completion of the Project. The Contract Documents are defective if a reasonably skilled

construction contractor doing Similar Work in the community and following generally accepted trade practice could not use the Contract Documents to identify each labor, material and equipment cost required to complete the Project. Contractor bears no responsibility for defects in the Contract Documents.

C. Unless Contractor has asked for and received a written clarification from Owner in time to prevent delay in the Work, any omission or ambiguity in the Contract Documents shall be interpreted as requiring the material or construction technique necessary to produce the greater quantity and better quality of Work.

D. Contractor will report promptly to Owner any design defects likely to result in problems during construction of the Project. However, Contractor is not a licensed architect or engineer and has no obligation to detect ambiguities, inconsistencies or omissions in the Contract Documents. While acting in good faith, Contractor is entitled to rely on the Work of a trained design specialist selected by and responsible to Owner.

E. Contractor is entitled to rely on dimensions and descriptions shown in the Contract Documents when ordering materials for Installation.

F. Ambiguities, inconsistencies and omissions in the Contract Documents are design defects, not errors by Contractor. The cost of correcting design defects shall be at the expense of Owner.

G. If inconsistent, approved changes to the Contract Documents take precedence over the original Contract Documents. Subsequent changes to the Contract Documents take precedence over prior changes to the Contract Documents.

H. If inconsistent, the construction Drawings take precedence over the Specifications.

I. If anything in the construction Specifications is inconsistent with anything else in the construction Specifications: (1) A product performance Requirement takes precedence over a named product or manufacturer, and (2) Other clauses in the Specifications take precedence over anything incorporated by reference into the Specifications.

J. If anything in the construction Drawings is inconsistent with anything else in the construction Drawings: (1) Dimensions written in numbers take precedence over scaled measurements, (2) Notes and schedules take precedence over lines on the Drawings, (3) Large scale Drawings take precedence over small scale Drawings, (4) Schedules take precedence over notes or other directions, (5) Specific notes take precedence over general notes, and (6) Bottom elevations of footings take precedence over any general notes.

K. If inconsistent, other Contract Documents take precedence over any manual, industry standard, recommendation, regulation, set of guidelines, code, or instructions incorporated by reference into the Contract Documents.

L. If inconsistent, any portion of the Contract Documents written in longhand takes precedence over anything printed in the Contract Documents.

M. Contractor has no liability for any omission, inconsistency or ambiguity in the Contract Documents or for any discrepancy between physical conditions at the Job Site and the Contract Documents, unless Contractor fails to report the error to Owner or Owner's Representative. Contractor shall be liable for avoidable costs and direct damages if Contractor proceeds with Work known to require interpretation or correction of the Contract Documents.



_____ _____

## LXII. Choice of Venue

A. The Parties agree that venue for any action related to performance of this contract shall be the appropriate court in California.

## LXIII. Entire Agreement

A. The Contract Documents are the entire agreement and constitute a complete integration of all understandings between Contractor and Owner on the subject of the Project. The Contract Documents supersede all prior negotiations, representations and agreements, whether written or oral. No subsequent notation, renewal, addition, deletion, change or amendment to this contract shall have any force or effect unless in the form of a written Change Order or amendment to this contract.

## LXIV. Severability

A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

## LXV. Cumulative Remedies

A. All rights and remedies provided to Contractor by the Contract Documents are cumulative and in addition to and not in limitation of rights and remedies available to Contractor at Law or in equity.

## LXVI. Materials and Substitutions

A. When the Specifications refer to materials or equipment by performance standard (such as an ASTM identifier), Contractor may select for Installation any product or equipment meeting that standard. When several products or manufacturers are identified as acceptable in the Specifications, Contractor has the option of using any of the products or selecting any of the manufacturers listed without seeking approval from Owner or Owner's Representative.

B. Except as stated otherwise in the Specifications, any reference in the Specifications to a brand, make, manufacturer, or model denotes only characteristics of quality, workmanship, economy of operation and suitability for the intended purpose. Contractor may use any substantially equivalent material, equipment, or article if approved in advance of Installation by Owner or Owner's Representative.

C. All materials and equipment used on the Project shall comply with Specifications in the Contract Documents unless a substitution is approved in advance of Installation by Owner or Owner's Representative. Contractor shall apply to Owner or Owner's Representative for approval of a substitute material when: (1) Any item specified is found to be unusable or unavailable when needed for Installation, or (2) The item specified is considered inferior to an equivalent item which is readily available at a Similar cost. With the application, Contractor shall include documentation: (1) Demonstrating that essential features of the substitute item are equal to or exceed similar features of the item specified, and (2) Listing delivered prices for the substitute item based on Material Supplier quotations. Owner or Owner's Representative may deny any application for substitution if not in the best interest of Owner. If approved, any savings in cost that result from the substitution will be credited to Owner. No request for substitution of material shall constitute grounds for extension of the Contract Time. Proposed substitutions shall not be purchased or installed without approval of the substitution by Owner or Owner's Representative.

## LXVII. Inspections

A. Contractor shall schedule and coordinate all Inspections required by the Contract Documents and by

public authority so as not to delay the progress of the Work or the Work of Owner or Separate Contractors. If the Contract Documents require that an Inspection be witnessed or attended by Owner or Owner's Representative, Contractor shall give advance notice of the time and place of the Inspection. Contractor shall schedule Inspections during regular Work Days and normal business hours, unless mutually agreed by Contractor, Owner, and Inspector.

B. Insofar as applicable and except where superseded by other provisions of the Contract Documents or by government regulation, Inspection of the following Work will be required on the Project: (1) Bearing surfaces of excavations before concrete is placed, (2) Reinforcing steel after Installation and before concrete is poured, (3) Structural concrete when poured, (4) Structural framing after erection and prior to being covered or enclosed, (5) Steel welding, (6) Mechanical and plumbing Work following Installation and prior to being covered or enclosed, (7) Electrical Work following Installation and prior to being covered or enclosed, (8) Above-ceiling Work when complete but before the finish ceiling material is installed, and (9) Final Inspections prior to occupancy.

C. Contractor shall be charged for the cost of rescheduling any Inspection which has been scheduled by Contractor but cannot be completed due to some act or omission of Contractor.

D. If an Inspection reveals Work of Contractor not in compliance with the Contract Documents or not in compliance with any code or statute, Contractor shall bear the costs of correction, the cost of repeating the Inspection, and any related costs, including reasonable charges by Owner or Owner's Representative for additional services.

## LXVIII. Performance Testing

A. When a performance test is required by either the public authority or the Contract Documents, Contractor shall: (1) Schedule the test, (2) Give adequate notice to Owner of the time and date set for the test, (3) Prepare Samples suitable for testing, and (4) Distribute test results to Owner or Owner's Representative. On request of Owner or Owner's Representative, Samples for testing shall be selected by or in the presence of Owner or Owner's Representative.

B. Should any performance test disclose that materials or Work of Contractor are not in compliance with Code Requirements or the Contract Documents, Contractor shall bear the cost of replacing the materials or Work and shall pay for additional testing.

## LXIX. Uncovering the Work for Inspections

A. So long as tests and Inspections are not complete, Contractor shall not enclose or cover any Work which the Contract Documents or the public authority requires be inspected or tested. Contractor shall give Owner 48-hour notice before covering any portion of the Work which Owner or Owner's Representative has asked to Inspect or test before covering.

## LXX. The Construction Schedule

A. Contractor shall prepare and submit to Owner for review and approval an estimated progress Schedule for the Work showing completion within the Contract Time. This progress Schedule shall identify expected starting and completion dates for each part of the job and identify tasks critical to timely completion of the Work.

B. Contractor may select any type of Schedule which: (1) Is suitable for monitoring progress of the Work, (2) Provides easy access to information about the timing of decisions Owner must make and acts Owner must perform, (3) Includes sufficient detail to demonstrate adequate planning for the Work, and (4) Presents a practical plan to complete the Work in an acceptable time period.

C. Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that job progress, sequence and timing conform to the construction Schedule. If Contractor falls materially behind the currently approved construction Schedule, Owner may require Contractor to prepare and submit for approval, at no cost to Owner, a plan for completing the Project within the Contract Time. Failure to submit a plan meeting this Requirement shall constitute grounds for termination under the terms of this agreement.

D. The Schedule shall allow for and depict the following: (1) Beginning and Completion Dates of each significant task (Work breakdown structure) in the job, (2) Delivery and approval of each Submittal, Samples and Shop Drawing, (3) Inspections and tests, (4) The Work of Subcontactors and Separate Contractors, and (5) Order dates and delivery dates of significant equipment and key materials. The construction Schedule shall include a legend which identifies the meaning of each symbol and abbreviation.

## LXXI. Extension of the Time for Completion

A. Owner shall execute a Change Order for Excusable Delay by extending the Contract Time for the period of the delay. Any of the following shall constitute excusable delay for which the Contract Time shall be extended: (1) Strike, boycott, embargo, terrorism, armed rebellion, quarantine or other obstructive action by employees, labor organizations, discovery of archaeological or paleontological artifacts, act or neglect of a public utility, or, order of government authority, and (2) Fire, flood, earthquake, tornado, tidal wave, lightning, casualty loss, epidemic, or unusually adverse weather.

B. For delay in delivery of materials or equipment or for a shortage of labor that results from unforeseeable circumstances beyond the control and without fault or negligence of either Contractor, or any Subcontractor or Material Supplier of Contractor, Owner will grant an extension of the Contract Time if: (1) Contractor notifies Owner or Owner's Representative promptly on discovery of the anticipated shortage, (2) Contractor substantiates the delay as unavoidable with a detailed chronology of events and all relevant correspondence, and (3) Contractor provides a firm date when the material, equipment or labor will be available.

C. Any Change Order granted for Excusable Delay shall have no effect on a Claim by Contractor for damage from the same delay for interruption, hindrance, or disruption.

## LXXII. Contractor Claims for Delay

A. The Contract Price shall be adjusted for any increase in the cost of performance of this contract caused by suspension, delay or interruption of the Work due to: (1) An error or omission in the Contract Documents, (2) A decision of Owner to change the Scope of the Work, unless the decision is the result of an error or omission by Contractor, (3) A decision of Owner to suspend the Work, unless the decision is the result of an error or omission by Contractor, (4) A failure by Owner or Owner's Representative to comply with the construction Schedule, (5) Any act or neglect of Owner or agent of Owner or any Separate Contractor, (6) Failure of Owner to yield control of the Job Site to Contractor, or (7) Failure of Owner to make payments when due under the terms of this agreement.

B. Within 3 Working Days after receipt of a notice of Claim for compensation for suspension, delay, or interruption, Owner shall: (1) Respond with a resolution, remedy, or direction to alleviate the delay, (2) Respond with a notice rejecting the Claim for delay, or (3) Respond with a draft Change Order accepting the Claim for delay. If the issue is not then resolved, Contractor may request a Change Order.

C. No change in the Contract Time for completion or the Contract Price shall become part of the Contract Documents without a Change Order.

D. Compensation to Contractor for suspension, delay, or interruption of Work shall include direct overhead (Job Site) expense, a proportionate share of unabsorbed indirect (home office) overhead expense, lost efficiency and lost profit taken as 15 percent of total compensable expenses. Direct overhead costs shall include, without limitation: (1) Labor (with taxes, insurance and fringe benefits) for the idle work force, (2) The fair rental cost of idle equipment (such as vehicles, construction tools and equipment), (3) Facilities (such as temporary structures, water, power, phone, and toilets), (4) The additional cost of Bonds and insurance, (5) Similar direct overhead costs of Subcontractors to whom Contractor is liable for damages that result from the delay, and (6) Demobilization and re-mobilization costs. Unabsorbed indirect overhead costs shall include, without limitation, the proportionate share of office rent, office supplies, office utilities, office equipment, advertising, professional fees, management salaries, technical services, estimating, selling, accounting, bookkeeping and clerical expense, business licenses, taxes (except income taxes), and insurance.

## LXXIII. Liquidated Damages

A. Time is of the essence with regard to this contract. The Schedule for completion and provisions in this contract for extension of the Contract Time are considered reasonable by Owner and Contractor. Any neglect, refusal or failure of Contractor to reach Substantial Completion within the Contract Time, plus approved extensions of that time, will result in damage to Owner impossible to estimate accurately in advance, and difficult to calculate after the occurrence. In lieu of actual damages for delay, Owner shall deduct from money due Contractor or which may become due Contractor the sum of $_____ as liquidated damages for each Calendar Day that Substantial Completion is delayed beyond the Contract Time, plus approved extensions of that time. This daily rate for liquidated damages is reasonable, is our best estimate of actual damages, and is not a penalty.

B. Time is of the essence with regard to this contract. The Schedule for completion and provisions in this contract for extension of the time for Final Completion are considered reasonable by Owner and Contractor. Any neglect, refusal or failure of Contractor to reach Final Completion within the time provided in this contract, plus approved extensions of that time, will result in damage in the form of inconvenience, loss of opportunities, and higher Inspection, Superintendence, and administrative costs to Owner. These costs are impossible to estimate accurately in advance, and difficult to calculate after the occurrence. In lieu of actual damages for delay, Owner shall deduct from money due Contractor or which may become due Contractor the sum of $_____ as liquidated damages for each Calendar Day that Final Completion is delayed beyond the time provided in this contract, plus approved extensions of that time. This daily rate for liquidated damages is reasonable, is our best estimate of actual damages, and is not a penalty.

C. Achieving Substantial Completion sooner than the Contract Time, plus approved extensions of that time, shall earn additional compensation to Contractor of $_____ for each Calendar Day that Substantial Completion is achieved prior to the Contract Time, plus approved extensions of that time.

D. Contractor shall not be charged liquidated damages for any failure, neglect or refusal to complete the Work on Schedule to the extent that the proximate cause of the delay was: (1) Strike, boycott, embargo, terrorism, armed rebellion, quarantine, or other obstructive action by employees or labor organizations, discovery of archaeological or paleontological artifacts, act or neglect of a public utility, or by order of government authority, (2) Fire, flood, earthquake, tornado, tidal wave, lightning, casualty loss, epidemic, or unusually adverse weather, (3) Any delay of Subcontractors or vendors resulting from items listed in sections 1 or 2 above, or (4) Any act or omission of Owner or anyone acting on behalf of Owner.

E. Except as provided elsewhere in this contract, liquidated damages are the exclusive damage remedy



_____ _____

for Owner for any failure of Contractor to complete Work according to Schedule. No damages of any other type or description shall be awarded Owner for failure of Contractor to comply with the construction Schedule.

## LXXIV. Consequential Damages

A. Contractor and Owner waive all Claims for consequential damages against each other, their respective officers, directors, partners, employees, agents, consultants and Subcontractors, arising out of or relating to this contract or the termination of this contract, except those consequential damages covered by insurance or specifically provided elsewhere in this agreement.

## LXXV. Suspension of Work by Owner

A. Owner may, without cause, direct Contractor in writing to suspend all or any part of the Work for a period of up to 30 Calendar Days. Contractor shall halt construction as directed and resume Work at expiration of the suspension period. The Contract Price and Contract Time shall be adjusted by a Change Order for excusable and compensable delay during the period of suspension. Contractor may elect to terminate this contract under conditions provided in this agreement if suspensions of any substantial portion of the Work exceeds, in aggregate, 60 Calendar Days.

## LXXVI. Right to Stop Work for Non-Payment

A. If Contractor is not paid any amount not in dispute within 35 Calendar Days after the date due, Contractor shall post on the Job Site and deliver to Owner and all Subcontractors a notice of intention to stop the Work if payments then due are not received in full within 15 Calendar Days. Thereafter, Contractor may suspend the Work until delinquent payments have been received, pursuant to California Civil Code § 3260.2.

B. Neither Contractor, nor Surety of Contractor, nor any Subcontractor of Contractor shall be liable for delay or damage that Owner may suffer as a result of suspension of the Work for failure to receive payments due under this agreement so long as: (1) Work was suspended by Contractor in compliance with the terms of this contract and with applicable Law, and (2) There is no good faith dispute that payment is due Contractor at the time of suspension. A good faith dispute exists if Owner provides: (1) A list of specific reasons for nonpayment, including labor, materials, or equipment not in compliance with the Contract Documents, and (2) Contractor is afforded a reasonable opportunity to correct the Defects cited or issue a credit compensating Owner for Defects that cannot be cured promptly.

## LXXVII. Early Partial Occupancy

A. Without prior approval of Contractor, Owner shall not occupy or use any portion of the Work until Substantial Completion of the Project. If Owner occupies or uses any portion of the Work before Substantial Completion of the Project and without prior approval of Contractor, the portion or portions used or occupied shall be considered complete, finished, accepted and the responsibility of Owner.

B. No Partial Use or occupancy of the Work by Owner shall commence prior to Substantial Completion without a Change Order confirming the responsibility of Owner for maintenance, utilities, operation of equipment, and security during early Partial Use or occupancy.

C. If any portion of the Project is used or occupied by Owner prior to Substantial Completion and if the Project is not completed within the Contract Time, liability of Contractor for delayed completion shall be reduced by the proportion of the Project used or occupied by Owner and for the time used or occupied by Owner prior to Substantial Completion.

## LXXVIII. Substantial Completion

A. When, in the opinion of Contractor, the Work is Substantially Complete, Contractor shall prepare a preliminary Punch List of Work remaining to be done and deliver that Punch List to Owner's Representative with a request for evaluation of Substantial Completion. If, in the opinion of Owner's Representative, items on the preliminary Punch List are consistent with Substantial Completion, Owner's Representative shall conduct an Inspection of the Work to evaluate compliance with the Contract Documents.

B. The Project shall not be considered Substantially Complete until: (1) All utilities and services are connected and operating, (2) All installed equipment has been tested and found to be in working condition, (3) Contractor has completed performance tests required by the Contract Documents, (4) Reports, maintenance manuals, warranties, keys, control devices, and Drawings required by the Contract Documents have been delivered to Owner, (5) Debris, waste, and excess materials have been removed from the site, and (6) Final Inspection has been passed and occupancy has been approved by the public authority.

C. If, after Inspection, the Project does not qualify as Substantially Complete, Owner or Owner's Representative shall provide Contractor with a written list of the Work found to be: (1) Incomplete, (2) Out of compliance with the Contract Documents, or (3) Defective in operation or workmanship. Contractor shall complete or correct all Work listed prior to requesting a subsequent Inspection for Substantial Completion.

D. Before Owner takes possession or occupancy of the Project, Contractor shall receive a comprehensive Punch List of discrepancies to be corrected or Work to be finished by Contractor and a date for completing this Work. Contractor shall complete and correct items on the Punch List by the designated date.

E. The Punch List given to Contractor is a complete and final list of Defective or incomplete Work on the Project. Owner shall be deemed to have accepted Work not on the Punch List. Nothing in this paragraph shall be interpreted as relieving Contractor of the obligation to meet warranty and call-back obligations.

F. Contractor shall annotate the Punch List with: (1) A detailed breakdown of the Work required to complete or correct each item, (2) The Subcontractor or trade responsible for the Work, and (3) The dates Work will commence and be finished on each item. No annotation is required for any item on the Punch List which is beyond the control of Contractor. Failure of Contractor to furnish a detailed completion Schedule for items on the Punch List shall constitute grounds for withdrawing acknowledgment of Substantial Completion.

G. Owner's Representative will prepare a certificate of Substantial Completion for signature by Owner and Contractor when the Project or a specific portion of the Project is ready for occupancy. Except as otherwise provided in the Contract Documents, signing of the certificate of completion shall: (1) Transfer to Owner responsibility for maintenance, safety, utility expense, controlling access at the site, and (2) Begin running of any warranty or call-back period on the Project.

H. After Substantial Completion, Contractor shall remain responsible for: (1) Damage caused by Contractor while completing the Work, and (2) Safety of crews when completing the Work.

## LXXIX. Delivery of Notices

A. Any written notice required by this contract can be: (1) Delivered by hand at the last known address of the addressee, or (2) Delivered by hand to the addressee or representative of the addressee, wherever



_____ _____

found. Notice is effective upon delivery.

B. Any written notice required by this contract can be: (1) Delivered by enclosing in a stamped envelope addressed to the last known address of the intended recipient and either deposited in a United States Postal Service mailbox or given to a USPS employee, or (2) Consigned to a commercial courier service and addressed to the last known address of the intended recipient. Notice is effective upon delivery if proof of delivery is provided; Where no proof of delivery is available, notice is effective 5 Calendar Days after mailing or consignment to a courier service.

Notice required by California Business and Professions Code § 7030:
Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, CA 95826.

## Signatures

The signatures that follow constitute confirmation by those signing that they have examined and understand the Contract Documents and agree to be bound by the terms of these documents.

Contractor may not begin Work before receiving from Owner a written notice to proceed. Any Work performed by Contractor before receipt of the notice to proceed shall be done at the risk of Contractor and without obligation of Owner.

This agreement is entered into as of the date written below.

**Owner Name: _____, Owner**

_____ _____/_____/_____
(Signature) (Date)

_____
(Printed Name and Title)

**Contractor Name: _____, Contractor**

_____ _____/_____/_____
(Signature) (Date)

_____
(Printed Name and Title)

## Glossary of Terms

**Beneficial Occupancy** refers to Owner's use of the project premises after Substantial Completion but prior to Final Completion. Beneficial Occupancy may occur when the project or some portion is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended purpose. The time limit for warranties applicable to that portion of the Work begin on the date the Owner begins Beneficial Occupancy, unless otherwise specified in this Agreement.

**Bond** means the security offered by a licensed surety company which may be used to satisfy a claim of failure to perform obligations undertaken in this Agreement.

**Calendar Day** means any day shown on the calendar beginning at midnight and ending at midnight the following day. Contrast the term Work Day which excludes Saturdays, Sundays and state-recognized holidays.

**Certification of Payment** is acknowledgment by someone not a party to this Agreement that Contractor is entitled to payment for work completed.

**Change Order** is a written modification of the Contract Price (including all claims for direct, indirect and consequential damages and costs of delay), Time for Completion, and Scope of Work under this Agreement. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract Documents.

**Claim** means a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief.

**Code Requirements** means all laws, statutes, regulations, building codes, ordinances, rules, and lawful orders of all public authorities having jurisdiction over Owner, Contractor, any Subcontractor, the Project, the Job Site, the Work, or the prosecution of the Work.

**Contract Completion Date** means the day by which the Work must be substantially complete.

**Contract Date** is the day on which the contract becomes binding between Contractor and Owner.

**Contract Documents** are this Agreement and all documents incorporated by reference into this Agreement.

**Contract Price** is the amount which will become due in exchange for work performed under this Agreement. Contract Price includes allowances for purchased materials and equipment and may be modified by a Change Order or contract modification. The Contract Price may be paid in one or more installments, including an Initial Payment at or before the start of work, Progress Payments as work is completed, and a Final Payment on final acceptance of the work. Payment Period is the time elapsed

between applications for progress payments or prior to the first application for progress payment.

**Contract Schedule** is a graphical representation of a practical plan to complete Work within the Contract Time.

**Contract Time** means the period between Date of Commencement and the date of Substantial Completion.

**Contractor** is an individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the Work under the terms of this Agreement.

**Defective Work** means construction done under this Agreement that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of Owner's Representative, or the requirements of an inspection, reference standard, test, or approval specified in the Contract Documents.

**Design Professional** means the person, organization or authorized representative who is responsible to the Owner for design of the Project through preparation of Drawings and Specifications. The term Design Professional may refer to an architect, designer, engineer or landscape architect.

**Drawings** (also called plans or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Drawings include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed Project. A group of drawings adequate to complete construction of the Project may be referred to as a plan set. Drawings can be either paper or electronic media.

**Emergency** means an unforeseen event, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Excusable Delay** means any circumstance which postpones completion of the Work and for which Contractor is entitled to an adjustment of the Contract Time but not an adjustment to the Contract Price. Contrast Inexcusable Delay which entitles Contractor to neither an adjustment of the Contract Price nor an adjustment in the Contract Time.

**Extra Work** means any change, interpretation, clarification or correction in the Contract Documents or in applicable law, ordinance or regulation which would increase or decrease the quantity of work, delay, suspend or interfere with the work, require an addition to or omission from the work, change the character, quality or nature of any part of the work or material used in the work, change levels, lines, positions or dimensions of any part of the work, require demolition or removal of any work completed under this Agreement, extend or amend the normal work day, alter the construction schedule or require completion of any part of the work at a time other than provided by this Contract when originally made.

**Final Completion** is the date of Owner's acceptance of the Work as fully performed according to the

Contract Documents.

**Furnish** means to supply and deliver to the job site.

**General Contractor** is an individual, partnership, firm, corporation, joint venture, or other legal entity undertaking execution of the Work under terms of a Prime Contract.

**Hazardous Materials** means radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, and toxic substances which are restricted, prohibited, or regulated by any agency of government in the manufacture, use, maintenance, storage, ownership or handling.

**Indemnification** Financial compensation intended to restore someone to their condition before a loss or damage.

**Inspection** is any review of the Project, including a visual review of the Work completed to ascertain compliance with Contract Documents, building codes and construction standards.

**Inspector** is anyone authorized by government or the Design Professional to conduct inspections of contract performance and materials supplied for the Work.

**Install** means to secure in position in compliance with the Contract Documents and includes unloading materials, supplying all necessary equipment and rigs to do the work and performing functional tests which demonstrate fitness for the intended purpose.

**Job Site** is the address or location of the Project.

**Law** means federal or state statutes, municipal ordinances, building codes, regulations adopted pursuant to statute, executive orders, official interpretations, and other rules and directives issued by government.

**Material Supplier** means any manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

**Modification** is a written amendment to the Contract signed by both parties.

**Owner's Representative** means the person or firm authorized to act and make administrative decisions on behalf of the Owner during construction. Any notice required to be delivered to the Owner may be delivered to the Owner's Representative. The scope of authority of the Owner's Representative is defined in this contract. Contractor cannot rely on any decision or instruction by Owner's Representative that is beyond the representative's defined scope of his authority. Nothing in this contract prevents Owner from issuing a notice or instructions directly to the Contractor. The Owner may change the Owner's Representative from time to time and may, in the event that Owner's Representative is absent, disabled or otherwise temporarily unavailable, appoint an interim Owner's Representative.

**Partial Use** means placing a portion of the Work in service for the intended purpose (or a related

purpose) before reaching Substantial Completion for all the Work. This partial use does not constitute Substantial Completion.

**Party (to this contract)** means a person or business organization which has an obligation to perform under the terms of this contract.

**Plans** (also called drawings or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Plans include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed project. A group of plans adequate to complete construction of the Project may be referred to as a plan set. Plans can be either paper or electronic media.

**Prime Contract** is a written agreement between Contractor and Owner which binds Contractor to furnish labor, equipment, or materials or perform certain work for a price to be paid by Owner.

**Project** means Work to be completed in accord with the Contract Documents. Work at the Job Site may include other projects to be completed by the Owner or other contractors working under other agreements.

**Provide** means furnish and install and includes connecting, testing, and placing in service for the intended use.

**Punch List** is a comprehensive list of incomplete, defective or incorrect Work yet to be completed or which does not comply with Contract Documents. A Punch List may be prepared by the Contractor, Subcontractor, Design Professional or Owner. An initial Punch List will be prepared before application for Substantial Completion. A Close-out Punch List will be prepared before Final Completion.

**Requirements** means, in addition to obligations, responsibilities and limitations set out in the Contract Documents, the obligations, responsibilities and limitations imposed by law, rules, orders, ordinances, regulations, statutes, codes and executive orders of governmental authorities or fire rating bureaus.

**Retainage** is a portion of each progress payment temporarily held back or retained by the owner. Accumulated retainage is released to Contractor on satisfactory completion of the work.

**Sample** means a physical example of material, equipment or workmanship intended to be representative of some portion of the Work. When approved, samples establish standards for completion of similar work on the Project.

**Schedule of Values** means the detailed breakdown of cost of materials, equipment and labor necessary to complete the Project as described in the Contract Documents.

**Scope of Work** means the Work as defined by the Contract Documents.

**Separate Contractor** means a person or firm working under a different contract but on the same site

and at the same time as work will be done under this contract.

**Shop Drawings** are diagrams, illustrations, pictures, schedules, performance charts, layouts, schematics, descriptive literature, schedules, performance and test data, and other data which are prepared by the Contractor or a Subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work to be completed in compliance with the Contract Documents. Once submitted to the approval authority and approved, Shop Drawings establish standards for completion of work on Project.

**Similar** means having a like kind, quality and characteristics. Similar is not to be construed as meaning identical or by the same manufacturer.

**Specifications** (also called specs) are the part of the Contract Documents which provide descriptions of materials, equipment, construction systems, technique and workmanship to be used on the Project. Specifications are both instructions to be followed by the Contractor and Subcontractors and a reference for the Building Official to evaluate code compliance.

**Subcontract** is a written agreement between a specialty contractor and General Contractor. Terms of the subcontract require the specialty contractor to complete some portion of the work General Contractor is obligated to perform under another agreement, usually with the Owner.

**Subcontractor** is any person or business entity under contract to a general contractor to perform some portion of the work general contractor is obligated to complete under a contract with the Owner. Subcontractor is an independent contractor performing services for another contractor rather than for the Owner. A person or organization providing supplies or materials for the Project but no job site labor is not a Subcontractor.

**Submittals** demonstrate the way by which the Contractor proposes to conform to the requirements of the Contract Documents. Submittals are shop drawings (diagrams, illustrations, pictures, schedules, performance charts, layouts, schematics, descriptive literature, schedules, performance and test data, and other data) required by the Contract Documents which are prepared for the Contractor to depict some portion of the Work. Submittals are delivered to the Owner for approval or disapproval by the Owner prior to purchase or installation.

**Substantial Completion** means the Project or a designated portion of the Project is nearly in compliance with the Contract Documents and is sufficiently complete to be considered fully operational in all its components and is fit for the intended use. Substantial Completion is reached when a limited number of non-conforming or defective items on a Punch List remain to be completed. Normally, a Project or portion of a Project cannot be considered Substantially Complete until (1) all utilities and services are connected and working, (2) all equipment is installed and in acceptable working condition, (3) additional activity by the Contractor to correct items on the Punch List will not prevent or disrupt use of the facility, and, (4) a certificate of occupancy has been issued by the appropriate authority.

**Sub-subcontractor** is any person or business entity under contract to a subcontractor or any lower tier subcontractor to perform some portion of the work subcontractor is obligated to complete under a contract with the prime contractor. Sub-subcontractors are independent contractors performing services

for another contractor rather than for the prime contractor. A person or organization providing supplies or materials for the Project but no job site labor is not a Sub-subcontractor.

**Superintendent** is the representative of the Contractor at the job site who is authorized to receive instructions from the Owner or Owner's Representative and who is authorized to direct the performance of work on behalf of the Contractor.

**Surety** means any qualified individual, firm or corporation other than the Contractor, which executes a bond to insure its acceptable performance of the contract.

**Tier** refers to the contractual level of a person or business organization doing work on the Project. A first-tier subcontractor has a contract with the general contractor but not the owner. A second-tier subcontractor has a contract with another subcontractor but not with the general contractor or the owner.

**Work** means all labor, material, equipment, tools, transportation, permanent and temporary utilities, connections, provisions for safety and management services required to complete the Project in compliance with the Contract Documents. Work may constitute the whole or a part of the Project. Work is to be performed in a safe, expeditious, orderly and professional manner in keeping with current standards of the industry. Work includes everything that is or should be evident to a skilled construction professional after careful examination of the Contract Documents and the Job Site.

**Work Day** means any day, excluding Saturdays, Sundays and state-recognized holidays, shown on the calendar beginning at midnight and ending at midnight the following day.