

**CONSTRUCTION AGREEMENT  
BETWEEN OWNER  
AND  
\_\_\_\_\_  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION AGREEMENT**

REVISED 03/21/11

# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>THE WORK</b>  | <b>4</b>  |
| <b>CONTRACT TIME</b>                                       | <b>4</b>  |
| <b>CONTRACT PRICE</b>                                      | <b>5</b>  |
| <b>SUPPLEMENTAL TERMS AND CONDITIONS</b>                   | <b>5</b>  |
| <b>GENERAL CONDITIONS</b>                                  | <b>1</b>  |
| <b>SECTION 1. GENERAL DEFINITIONS</b>                      | <b>1</b>  |
| <b>SECTION 2. INTENT</b>                                   | <b>2</b>  |
| <b>SECTION 3. DESIGN PROFESSIONAL (“DP”)</b>               | <b>2</b>  |
| <b>SECTION 4. CONTRACTOR</b>                               | <b>4</b>  |
| <b>SECTION 5. OTHER CONTRACTORS AND COOPERATION</b>        | <b>4</b>  |
| <b>SECTION 6. SITE CONDITIONS</b>                          | <b>5</b>  |
| <b>SECTION 7. DRAWINGS AND SPECIFICATIONS</b>              | <b>6</b>  |
| <b>SECTION 8. SUBMITTALS, DRAWINGS AND SHOP DRAWINGS</b>   | <b>8</b>  |
| <b>SECTION 9. PRODUCT SAMPLES, TESTS, AND CERTIFICATES</b> | <b>10</b> |
| <b>SECTION 10. AS-BUILT DRAWINGS</b>                       | <b>11</b> |
| <b>SECTION 11. SUPERINTENDENCE BY THE CONTRACTOR</b>       | <b>11</b> |
| <b>SECTION 12. NONDISCRIMINATION IN EMPLOYMENT</b>         | <b>12</b> |
| <b>SECTION 13. SUBCONTRACTS</b>                            | <b>13</b> |
| <b>SECTION 14. COMMUNICATIONS</b>                          | <b>14</b> |
| <b>SECTION 15. PERMITS, TAXES AND FEES</b>                 | <b>14</b> |
| <b>SECTION 16. BONDS</b>                                   | <b>14</b> |
| <b>SECTION 17. INSURANCE</b>                               | <b>14</b> |
| <b>SECTION 18. ALLOWANCES</b>                              | <b>18</b> |

REVISED 03/21/11

|                    |   |           |
|--------------------|---|-----------|
| <b>SECTION 19.</b> | <b>INDEMNIFICATION</b>                          | <b>18</b> |
| <b>SECTION 20.</b> | <b>PROGRESS AND SCHEDULING</b>                  | <b>18</b> |
| <b>SECTION 21.</b> | <b>DAILY LOG</b>                                | <b>19</b> |
| <b>SECTION 22.</b> | <b>MISCELLANEOUS DUTIES</b>                     | <b>20</b> |
| <b>SECTION 23.</b> | <b>INSPECTION OF WORK</b>                       | <b>22</b> |
| <b>SECTION 24.</b> | <b>CORRECTION OF WORK</b>                       | <b>23</b> |
| <b>SECTION 25.</b> | <b>DELAYS AND TIME EXTENSIONS</b>               | <b>25</b> |
| <b>SECTION 26.</b> | <b>SUSPENSION OF WORK</b>                       | <b>27</b> |
| <b>SECTION 27.</b> | <b>RIGHT TO STOP WORK</b>                       | <b>27</b> |
| <b>SECTION 28.</b> | <b>CHANGES</b>                                  | <b>27</b> |
| <b>SECTION 29.</b> | <b>PAYMENT</b>                                  | <b>29</b> |
| <b>SECTION 30.</b> | <b>WARRANTY</b>                                 | <b>31</b> |
| <b>SECTION 31.</b> | <b>SUBSTANTIAL COMPLETION</b>                   | <b>32</b> |
| <b>SECTION 32.</b> | <b>FINAL COMPLETION AND FINAL PAYMENT</b>       | <b>33</b> |
| <b>SECTION 33.</b> | <b>ASSIGNMENT OF CLAIMS</b>                     | <b>34</b> |
| <b>SECTION 34.</b> | <b>DISPUTES</b>                                 | <b>34</b> |
| <b>SECTION 35.</b> | <b>FORUM</b>                                    | <b>35</b> |
| <b>SECTION 36.</b> | <b>TERMINATION BY THE OWNER</b>                 | <b>35</b> |
| <b>SECTION 37.</b> | <b>TERMINATION FOR CAUSE</b>                    | <b>35</b> |
| <b>SECTION 38.</b> | <b>TERMINATION FOR CONVENIENCE OF THE OWNER</b> | <b>38</b> |
| <b>SECTION 39.</b> | <b>ASSIGNMENT OF CONTRACT</b>                   | <b>38</b> |
| <b>SECTION 40.</b> | <b>LAW TO GOVERN</b>                            | <b>38</b> |

REVISED 03/21/11

**CONSTRUCTION AGREEMENT**  
**BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, **20** \_\_\_\_\_ by and between the Arizona Board of Regents, a body corporate, for and on behalf of **Northern Arizona University** ("Owner") and \_\_\_\_\_ ("Contractor"). The terms of this Agreement are to be construed consistently with the other Contract Documents enumerated in Section 1 of the General Conditions of the Construction Agreement.

In consideration of the mutual promises of the parties, the Owner and the Contractor agree as follows:

1. **THE WORK:** The Contractor shall furnish all labor, materials, equipment, supplies and other items necessary to perform the Work for the Project described as: \_\_\_\_\_, **NAU Project #** \_\_\_\_\_ located at the following site: Northern Arizona University, Flagstaff, Arizona, in strict accordance with the Drawings and Specifications prepared by \_\_\_\_\_ ("Design Professional" or "DP") and all other Contract Documents.

2. **CONTRACT TIME:** The Contractor shall commence the Work only if and when directed in a written Notice to Proceed signed by the Owner. The Work shall commence no later than \_\_\_\_\_.

Substantial Completion, as defined herein, shall be achieved by \_\_\_\_\_. In view of the difficulty or impossibility of determining the Owner's damages from delay, should the Contractor fail to achieve Substantial Completion by that date, as extended by any Change Orders, the Contractor agrees to pay and will pay to Owner, in addition to all other sums the Contractor may be obligated to pay pursuant to the Contract Documents, the sum of \_\_\_\_\_ **and no/100 Dollars(\$ \_\_\_\_\_)** for each calendar day of delay as liquidated damages for such delay and not as a penalty.

Final Completion, as defined herein, shall be achieved within **fourteen (14)** calendar days of Substantial Completion. Should the Contractor fail to achieve Final Completion by that date, as extended by any Change Orders, the Contractor agrees to pay and will pay to Owner, in addition to all other sums the Contractor may be obligated to pay pursuant to the Contract Documents, the sum of \_\_\_\_\_ **and no/100 Dollars(\$ \_\_\_\_\_)** for each calendar day of delay as liquidated damages for such delay and not as a penalty.

These sums for Substantial Completion liquidated damages and Final Completion liquidated damages may be withheld from the balance of the Contract Price as it becomes due. Should liquidated damages exceed the Contract Price due or to

REVISED 03/21/11

become due, then the Contractor shall pay the Owner the difference within 3 days of receipt of written demand.

Work to be completed prior to a determination of Final Completion includes the fulfillment of all contractual requirements, including the completion of all punch list items and Substantial Completion and Final Completion Closeout documents.

3. **CONTRACT PRICE:** Subject to increases and decreases for Change Orders in accordance with the Contract Documents, the Owner shall pay to the Contractor the following Contract Price, in progress payments as provided in the Contract Documents: \$ \_\_\_\_\_ .

4. **SUPPLEMENTAL TERMS AND CONDITIONS:** The following supplemental terms and conditions and/or documents are part of this Agreement:

- A. General Conditions of the Construction Agreement, revised June 4, 2010 (attached).
- B. Plans and Specifications for \_\_\_\_\_ **dated** \_\_\_\_\_ **(attached)**.
- C. Addendum #1 dated \_\_\_\_\_. (if applicable)
- D. Performance Bond – Arizona Board of Regents Policy 3-804E.
- E. Payment Bond - Arizona Board of Regents Policy 3-804E.
- F. Power of Attorney.
- G. Certificate of Insurance, General Liability, Automobile and Builder's Risk.
- H. Workers Compensation Certificate.
- I. List of Subcontractors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in 2 duplicate originals, any one of which shall be adequate proof of this Agreement, as of the date written above.

**CONTRACTOR**

**OWNER**

ARIZONA BOARD OF REGENTS  
for and on behalf of  
Northern Arizona University

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**GENERAL CONDITIONS  
OF THE  
CONSTRUCTION AGREEMENT**

**SECTION 1.        GENERAL DEFINITIONS**

1.1 "Addenda" means clarifications or changes in the Work provided to bidders in writing prior to the public bid on the Contract.

1.2 "Contract Documents" or "Contract" means the Construction Agreement Between Owner and Contractor, the General Conditions of the Construction Agreement, any Supplemental Conditions of the Construction Agreement, the Drawings, the Specifications, the Performance and Payment Bonds, the Project Manual, Addenda and Modifications.

1.3 "Date of Substantial Completion" shall be the date certified by the Design Professional to the Owner that the work is in the Condition defined herein as Substantial Completion. "Date of Final Completion" shall be the date certified by the Design Professional to the Owner that the work is in the condition herein defined as Final Completion.

1.4 "Day" means calendar day unless specifically otherwise provided herein or by law.

1.5 "Design Professional" ("DP") is that individual, partnership or other legal entity defined in Section 3.1 herein.

1.6 "Modifications" means Change Orders signed by the Owner, or other written amendments signed by both the Owner and the Contractor at or after the execution of the Contract, or the DP's written interpretations or directions for minor changes in the Work. A "minor change" is defined as one having no impact on cost or time or the Owner's approved design intent, as determined by the Owner.

1.7 "Project" means all components of the improvements to be constructed for the Owner, regardless of whether the Work is all or only a part.

1.8 "Project Manual" means the written volume so titled which includes the bid documents, sample forms, specifications, and description of the project.

1.9 "Substantial Completion" means the Project is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended, including, but not limited to, Owner receipt of all items listed in Section 31.3 herein.

REVISED 03/21/11

1.10 "Final Completion" means the Project is 100% complete in accordance with the Contract Documents, including, but not limited to, Owner receipt of all items listed in Section 32.3 herein.

1.11 "Work" consists of all labor (including supervision), materials, equipment, supplies and other items reasonably required to construct all or a portion of the Project according to the Contract Documents.

## **SECTION 2. INTENT**

2.1 The Contract represents the entire and integrated agreement between the Owner and the Contractor, and it supersedes all prior oral or written negotiations, representations or agreements. The Agreement(s) may only be changed by written modifications, and the Contractor understands and agrees that if the Contractor proceeds with any work upon verbal request only, Contractor is agreeing by his conduct that such work, or change in the work, constitutes a minor change.

2.2 The Contract Documents are to include all items reasonably necessary to construct the Work, expressly or by inference. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

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

2.4 Generally, the Drawings indicate dimensions, positions and details of construction; the Specifications establish criteria and quality for materials and standards for workmanship. All Work shall be performed in a workmanlike manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose unless otherwise specified.

## **SECTION 3. DESIGN PROFESSIONAL ("DP")**

3.1 The DP is the individual or legal entity identified in the Contract Documents and/or otherwise designated by the Owner who is retained by the Owner to design and/or oversee the Project. For purposes of this Contract only, the term also includes individuals employed by any state university who render such services in connection with the Project.

3.2 The DP shall have the right, responsibility and authority to carry out the specific duties required of the DP, as described herein and in the Agreement(s)

REVISED 03/21/11

between the DP and the Owner, including any amendments thereto. Any such amendments shall be in writing and furnished to the Contractor.

3.3 The DP will visit the site as it is deemed by the DP or Owner to be appropriate in order to advise the Owner as to the quality and progress of the construction. The Contractor shall cooperate with the DP in all respects in this regard, including attending meetings as requested.

3.4 The DP will be the initial interpreter of the requirements of the Contract Documents. The DP shall render written interpretations with reasonable promptness following a written request from the Owner or the Contractor. These interpretations shall be consistent with the intent of the Contract Documents.

3.5 Any claims or controversies between the Owner and the Contractor may be referred in writing to the DP for a written determination.

3.6 Any disagreements with the DP's interpretations or determinations must be timely submitted and resolved in accordance with Arizona Board of Regents Policy 3-809(C), as amended or superseded, which shall be the parties' sole remedy. A current copy of such policy has been made available to the Contractor.

3.7 The DP will review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the Contract Documents. Such action shall be taken with reasonable promptness as specified so as to cause no delay. The DP's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.

3.8 Following consultation with the Owner, the DP will take appropriate action on Change Orders and may authorize minor changes in the Work as defined in Section 1.6.

3.9 The DP and Owner will each have authority to reject work which does not conform to the Contract Documents and to require special inspection or testing but will take such action only after consultation with the other. However, neither the authority to act given to the DP and the Owner under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

3.10 Based on the DP's observations, evaluation of applications for payment and consultation with the Owner, the DP will determine the amount owing the Contractor and will issue certificates for payment.

REVISED 03/21/11



## **SECTION 4.           CONTRACTOR**

4.1     The Contractor is the individual or legal entity identified in the Contract Documents who is licensed to perform the Work under the laws of the State of Arizona. The Contractor shall only use duly licensed Subcontractors in connection with the Work, subject to the provisions for Owner approval contained in the Contract Documents.

4.2     The Contractor and his work force must comply with University parking and traffic regulations. Temporary permits shall be obtained from the campus police department and properly displayed on each vehicle, and vehicles must be operated and parked in conformance with the regulations. Citations and fines are the Contractor's responsibility.

4.3     If the Owner furnishes keys to the Contractor to provide access to University owned property, the Contractor shall assure that no such keys are duplicated, and shall return all such keys upon request of the Owner or prior to receipt of Final Payment, whichever is earlier. If the Contractor fails to return all keys furnished to it, the Contractor shall be responsible for and shall pay all costs (including materials and labor of University personnel or others) associated with rekeying (removal of tumblers and insertion of new tumblers) or replacement of old locks which could be opened with keys furnished to the Contractor, and the parties agree that such cost may be deducted in full or in part from any retainage remaining to be paid under the terms of this Contract with any balance due immediately from Contractor to Owner.

## **SECTION 5.           OTHER CONTRACTORS AND COOPERATION**

5.1     The Owner reserves the right to award other Agreement(s) related to the Project, or to perform certain work itself. Such other work may or may not be known to the Owner or disclosed to the Contractor prior to bidding this project. The Contractor shall afford the Owner and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly coordinate its Work with theirs in such manner as the DP may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the site and their work.

5.2     Upon request of the Contractor, the DP or Owner will provide the Contractor with a copy of all plans, specifications, schedules and other data relating to other Agreement(s) or work. The Contractor shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the DP in writing of any conflicts with the Work to be performed by the Contractor. In no event shall such notice be given so late as to interfere with or delay the work to be performed by the Contractor. Failure of the Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the Contractor may have as a result of the necessity to coordinate the Contractor's work with other activities.

REVISED 03/21/11

5.3 Should the Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim or cause of action against the Owner for such damage and hereby waives any such claim. The Contractor does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall be defined to include, but not be limited to, any reasonable delay on the part of any such other contractor, whether due to negligence, gross negligence, inadvertence or any other cause.

5.4 Should the Contractor cause damage to the work or property of any other contractor or of the Owner, the Contractor shall upon receiving due notice promptly attempt to settle with such other contractor by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or other costs which the Owner has incurred.

## **SECTION 6. SITE CONDITIONS**

6.1 The Contractor shall thoroughly acquaint himself with all available information concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work.

6.2 The Contractor acknowledges that it has thoroughly examined the site, plans and specifications, boring data and all other soils information and as-built data made available and by submission of the bid herein avows that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. The Contractor acknowledges that boring data and other soils information and as-built data made available is only a general indication of materials and/or conditions likely to be found adjacent to holes bored or in existing structures or facilities or other areas. If the Contractor determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the Owner in writing. If the Contractor determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the Owner, remains dissatisfied or uninformed, the Contractor shall refrain from submitting a bid, or if the Contractor does submit a bid, the Contractor shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate, or ambiguous information.

6.3 The Contractor shall immediately, and before such conditions are disturbed, notify Owner in writing of:

REVISED 03/21/11

A. Subsurface or latent physical conditions encountered at the site which differ materially from those indicated in the Contract Documents and which were not known by the Contractor or could not have been discovered by careful examination and investigation of the information available at bid time and the site, and which could adversely affect the timely performance of the Work or its cost or;

B. Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in Work of the character provided for in the Contract Documents.

6.4 The DP and/or the Owner shall within ten (10) days or such other reasonable time as necessary, investigate the conditions discovered. If the DP and/or the Owner find that conditions are so materially different as to support an equitable adjustment in the Contract Price or the Contract Time, this will be done by written Change Order. If the DP and/or the Owner determine that no Change Order will be issued, the Contractor shall continue with the Work at no additional cost.

6.5 No claim by the Contractor for an increase in the Contract Price or Contract Time hereunder shall be allowed without proper advance notice and an adequate opportunity for the Owner to investigate.

## **SECTION 7. DRAWINGS AND SPECIFICATIONS**

7.1 The Contractor shall study and compare the Contract Documents sufficiently in advance of beginning each phase or portion of the work to be performed and immediately report any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

7.2 The Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as Shop Drawings. Where required, the Contractor shall perform no portion of the Work without approved Shop Drawings, Product Data or Samples; any Work performed in violation of this provision will be solely at the Contractor's risk regardless of DP's and/or Owner's knowledge of such Work.

7.3 Contract Documents shall be interpreted as being complementary, requiring a complete project or designated portion thereof. Generally, the specifications address quality, types of materials and contract conditions while the drawings show placement, sizes, fabrication details of materials. In the event of conflict in the Contract Documents, the priorities stated below shall govern:

A. Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent modified.

REVISED 03/21/11

B. In case of conflict between drawings and specifications, the specifications shall govern.

C. Conflicts within the plans:

- (1) Schedules, when identified as such, shall govern over all other portions of the plans.
- (2) Specific notes shall govern over all other notes and all other portions of the plans, except the schedules described in 7.3(c)(1) above.
- (3) Larger scale drawings shall govern over smaller scale drawings.
- (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.

D. Conflicts within the specifications:

Contract General Conditions shall govern over all sections of the specifications except for specific Modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the Contract General Conditions.

E. In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

F. In the event of any conflict or ambiguity, the Contractor shall request an interpretation by the DP before performing the Work.

7.4 If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard.

“Minor detail” shall include the concept of substantially identical components, where the price of each such component is small even through the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial.

The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts or materials otherwise set forth in the Contract Documents.

REVISED 03/21/11

## **SECTION 8.            SUBMITTALS, DRAWINGS AND SHOP DRAWINGS**

8.1    The Contractor shall maintain at the site, for the use of the Owner and of the DP, one copy of all Drawings, Specifications, bulletins, addenda, Change Orders, field orders, approved Shop Drawings, approved Submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their Modifications, if any, in good order and marked daily by the Contractor to record all approved changes made during construction. These shall be turned over to the DP by the Contractor during Project Closeout for the purpose of assembling and correlating the material for use by the Owner.

8.2    The Contractor shall submit to the DP, with such promptness as to cause no delay in its Work or in that of any other Contractor, all Submittals and Shop Drawings as required by the Contract Documents, or as necessary to illustrate details of the Work.

8.3    Each Submittal and Shop Drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the Shop Drawings. Each series shall be numbered consecutively for ready reference and each Submittal and Shop Drawing shall be marked with the following information:

- A. Date of Submission
- B. Name of Project
- C. Location of Project
- D. Branch of Work (Specification Section)
- E. Project Number
- F. Name of Submitting Contractor
- G. Name of Subcontractors
- H. Revision Number

8.4    All Subcontractor Submittals and Shop Drawings shall be submitted to the DP by the Contractor and shall bear written approval by the Contractor. Any Submittals or Shop Drawings submitted without this approval will be returned for resubmission; the Submittals or Shop Drawings will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's sole responsibility.

8.5    The Contractor shall include with Submittals and Shop Drawings, a letter indicating all deviations from the DP's Drawings and Specifications. Failure to so notify

REVISED 03/21/11

the DP of such deviations will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the deviations are not acceptable, the Contractor will be required to furnish the item as specified or as indicated on the DP's Drawings.

8.6 It is the Contractor's obligation and responsibility to check all of its Submittals and Shop Drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and Shop Drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with Work of other trades or other separate contractors.

8.7 By approving or submitting Submittals and/or Shop Drawings, the Contractor thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each Submittal and/or Shop Drawing with the requirements of the Work and of the Contract Documents. If any specified material item or part is not available, the Contractor shall so indicate to the DP.

8.8 The DP shall review Submittals and Shop Drawings and return them to the Contractor within twenty (20) days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the Contractor must assume a 20-day review period for each Submittal or set of Shop Drawings. For complex Submittals, the Contractor must assume two 20-day review cycles. If review and approval are delayed beyond twenty (20) days, the DP shall notify the Contractor and the Owner in writing stating the reason for the delay. Approval shall not relieve the Contractor from the responsibility for deviations from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any Modification will be approved only if it is in the interest of the Owner to effect an improvement in the Work and does not increase the Contract Price or Contract Time. Any such Modification is subject generally to all other provisions of the Contract Documents, and is without prejudice to any and all rights under any surety bond.

8.9 If the DP returns a Submittal or Shop Drawing to the Contractor with the notation "rejected, revise and resubmit," or "approved as noted," the Contractor, so as not to delay the Work, shall promptly submit a Submittal or Shop Drawing conforming to the requirements of the Contract Documents and indicating in writing on the Submittal or Shop Drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. Any other differences between the resubmittal and the prior submittal shall also be indicated on the Shop Drawing and on the resubmittal as a special note.

8.10 No extension of time will be granted to the Contractor because of its failure to submit Submittals or Shop Drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the Contractor

REVISED 03/21/11

has received written approval. The Contractor shall furnish prints of its approved Submittals and Shop Drawings to all the Contractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the site.

## **SECTION 9. PRODUCT SAMPLES, TESTS, AND CERTIFICATES**

9.1 The Contractor shall furnish Product Samples of all items requested or required by the Specifications. Product Samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the DP and the Owner. The DP and/or Owner will review Product Samples in accordance with Sections 8.8 - 8.10 above.

9.2 Each Product Sample must be accompanied by a letter of transmittal containing the following information:

- A. Date of Submission
- B. Name of Project
- C. Location of Project
- D. Branch of Work (Specification Section Number)
- E. Project Number
- F. Name of Submitting Contractor
- G. Name of Subcontractor

9.3 The Contractor shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the Contractor shall endorse it and submit it to the DP together with a statement of compliance in its own name.

9.4 No tests, inspections or approvals performed or given by the Owner or the DP or others acting for the Owner or any agency of Federal, State or Local government nor any acts or omissions by the Owner or the DP in administering this Contract shall relieve the Contractor from its duty to perform the Work in accordance with the Contract Documents and applicable law.

9.5 Unless the DP is authorized at the time of submittal to return samples at the Contractor's expense, rejected samples will be destroyed.

REVISED 03/21/11

9.6 After delivery of materials, the DP may make such tests as it deems necessary, with samples required for such tests being furnished by and at the cost of the Contractor. Any test is for the benefit of the Owner and shall not relieve Contractor of the responsibility for providing quality control measures to assure that Work strictly complies with the Contract Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

9.7 On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the DP shall have the right to cause their removal and replacement by items meeting Contract Document requirements or to demand and secure appropriate reparation to the Owner from the Contractor.

## **SECTION 10. AS-BUILT DRAWINGS**

10.1 Prior to Substantial Completion, the Contractor shall complete and turn over to the DP a preliminary copy of the As-Built Drawings (Preliminary As-Built Drawings). The Preliminary As-Built Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from contract Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the Preliminary As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The Preliminary As-Built Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.

10.2 For any changes or corrections in the Work which are made subsequent to Substantial Completion, revisions shall be submitted to the DP prior to Final Completion (Final As-Built Drawings).

## **SECTION 11. SUPERINTENDENCE BY THE CONTRACTOR**

11.1 The Contractor shall have a competent superintendent on the site at all times during the progress of the Work. Contractor's superintendent must be acceptable to the Owner. The superintendent shall have such assistants with such individual specialized competencies including, but not limited to, CPM scheduling, as may be necessary to fully understand and oversee all aspects of the Work. The superintendent and his assistants all shall be physically fit for their Work and capable of going to all locations where Work is being performed. A communication to the superintendent or his designated assistants by the Owner or DP is binding upon the Contractor. The Contractor's superintendent shall be responsible for the prevention of accidents at the site. The Commercial Construction Safety Code of the Arizona Industrial Commission shall apply to all Work, and a copy of the Code shall be available at the site.

REVISED 03/21/11



11.2 The Contractor shall at all times enforce strict discipline and good order among the workers on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the work assigned to him. The Contractor shall be responsible to the Owner for all acts and omissions of its employees, Subcontractors, Suppliers, anyone whom the Contractor may allow to perform or inspect or supervise any Work, and their agents and employees together with anyone whom the Contractor may allow to come on the Project site. In addition, if the Contractor receives written notice from the Owner to dismiss any unskilled or unfit subcontractors or employees or one who is a hindrance to proper or timely execution of the Work, the Contractor shall dismiss those subcontractors or employees and agrees to replace those dismissed without delay to the Project and at no additional cost to the Owner.

11.3 The Contractor shall competently and thoroughly direct and superintend all of the Work and shall be solely responsible for all construction safety, means, methods, techniques, sequences and procedures. It shall coordinate and schedule all Work under this Contract, the performance of all its employees, Subcontractors, and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work.

## **SECTION 12. NONDISCRIMINATION IN EMPLOYMENT**

12.1 In connection with the performance of Work under this Contract, the Contractor agrees to observe Arizona Executive Order 99.4 and all applicable Arizona and Federal Law. Contractor further agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disability, except to the extent such discrimination is not prohibited by pertinent State or Federal law or Executive Order. In addition, the Contractor agrees to actively recruit in accordance with any affirmative action programs applicable to Contractor. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

12.2 The Contractor shall make a good-faith effort to ensure that not less than 15% of the Work performed under this Contract is performed by a small business as defined in A.R.S. § 41-1001(19). The Contractor shall report to the Owner the value of the Work performed under this provision. Upon Owner's request documentation evidencing Contractor's compliance with this provision shall be furnished in a format acceptable to Owner as a condition precedent to Final Payment.

REVISED 03/21/11

## **SECTION 13.        SUBCONTRACTS**

13.1 The Contractor shall supply with its bid to the Owner a written list of all proposed subcontractors and suppliers. The Owner will promptly reply to the Contractor in writing stating whether the Owner or the DP, after due investigation, has any objection to any such proposed subcontractor or supplier. The Contractor shall not employ any subcontractor or supplier against whom the Owner or the DP has reasonable objection. If, prior to the award of the Contract, the Owner or DP has a reasonable objection to any subcontractor or supplier and refuses in writing to accept such person or organization, the apparent low bidder may, prior to the award, either withdraw his bid without forfeiture of bid security or may propose an acceptable substitution thereof provided that same results in no change in the bid price. Failure of the bidder to submit an acceptable substitute in a timely manner shall render its bid nonresponsive.

13.2 No substitution or change shall be made by the Contractor in the subcontractor/supplier list after its submission to the Owner without prior written approval by the Owner. Unapproved or untimely substitutions may be cause for invalidation of the Contractor's bid in the Owner's discretion, thereby rendering the Contract voidable.

13.3 All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate written agreement which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents, but no contractual relationship shall exist between any subcontractor or supplier of any tier and the Owner, unless the Owner invokes the assignment provisions of the following subsection. Upon request, the Contractor shall provide fully executed copies of any subcontracts and purchase orders to the Owner.

13.4 The Contractor hereby assigns to the Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the Work, which assignment will be effective upon termination of the Contract by the Owner and only as to those subcontracts and purchase orders which the Owner assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the Owner and its assigns. Such assignment is part of the consideration to the Owner for entering into this agreement with the Contractor and may not be withdrawn prior to Final Completion.

13.5 The Owner may require each proposed subcontractor whose subcontract will exceed \$100,000 to furnish a performance bond and a payment bond on Owner-approved forms in the full amount of its subcontract. The Owner will reimburse the Contractor for the documented cost of the subcontractor's performance bond premiums in the event the Owner requires such bonds by the subcontractor.

REVISED 03/21/11

**SECTION 14.        COMMUNICATIONS**

14.1 All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Contract.

14.2 Copies of all such communications from the Contractor to the DP shall be delivered to the Owner.

14.3 Communications will be deemed to have been made if delivered in person or if mailed to the address designated in the Contract or otherwise agreed upon by the parties.

**SECTION 15.        PERMITS, TAXES AND FEES**

15.1 The Contractor shall secure and pay for any necessary building permits and for all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work, and shall immediately deliver copies to the Owner and DP. The Contractor shall be responsible for complying with all applicable Federal, State and local laws, codes, notice requirements, and regulations applicable to the site and prosecution of the Work. Contractor shall be responsible for and pay any costs associated with or arising from any non-compliance. Usual city building permit and inspection fees are not applicable to work constructed on the Owner's property.

15.2 The Contractor shall pay all taxes for and related to the Work or its portion thereof which are legally enacted at the time bids are received, whether or not yet effective.

**SECTION 16.        BONDS**

16.1 The Contractor shall file with the Owner at or prior to the time of execution of the Contract, a performance bond and a payment bond on Owner-approved forms, each in the full amount of the Contract. The Surety furnishing these bonds shall be satisfactory to the Owner and shall be authorized to do business in the State of Arizona.

**SECTION 17.        INSURANCE**

17.1 The Contractor shall not commence any Work until it obtains all required bonds and insurance and furnishes satisfactory proof to the Owner. The Contractor shall not permit any Subcontractor to commence work on the Project until all bond and insurance requirements have been complied with by the Subcontractor.

17.2 Without limiting any liabilities or any other obligations of the Contractor, the Contractor shall provide and maintain, and cause its Subcontractors to provide and maintain, insurance coverage in forms and with insurers acceptable to the Owner and

REVISED 03/21/11

from companies authorized to do business in Arizona. Insurers shall have A. M. Best rating of A- VII or better. Both the Contractor and its Subcontractors shall maintain the following insurance coverage until all obligations under this contract are satisfied.

17.3 Worker's Compensation Insurance. Worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Contractor, its employees, or both, engaged in the performance of services under this Contract. In addition, employer's liability insurance with the minimum limit of \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

17.4 General Liability Insurance. Commercial general liability insurance with a minimum, unimpaired combined single limit of \$ 1,000,000 each occurrence and a general aggregate minimum limit of \$ 2,000,000 depending upon the size of the construction budget. (See chart below). The policy shall include coverage for bodily injury, broad form property damage (including completed operation), personal injury (including coverage for contractual and employee acts), and blanket contractual products. Said policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to eliminate third-party action over claims. In the event the General Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services as evidenced by annual Certificates of Insurance.

**EDITOR'S NOTE: USERS OF THIS CONTRACT FORM SHOULD SELECT  
THE MINIMUM INSURANCE REQUIREMENT  
BASED ON THE CHART SET FORTH BELOW.**

Minimum Required Insurance Limits Based on Total Construction Costs

| Construction Budget          | General Liability for Contractor    |
|------------------------------|-------------------------------------|
| \$0 - \$1,000,000            | \$1,000,000 Aggregate \$2,000,000   |
| \$1,000,000 to \$5,000,000   | \$2,000,000 Aggregate \$4,000,000   |
| \$5,000,000 to \$10,000,000  | \$5,000,000 Aggregate \$5,000,000   |
| \$10,000,000 to \$20,000,000 | \$5,000,000 Aggregate \$10,000,000  |
| \$20,000,000 to \$40,000,000 | \$10,000,000 Aggregate \$15,000,000 |
| \$40,000,000 to \$50,000,000 | \$25,000,000 Aggregate \$25,000,000 |
| above \$50,000,000           | Consult State Risk Management       |

17.5 Automobile Liability Insurance. Commercial/Business automobile liability insurance with a minimum, combined single limit for bodily injury, death and property

REVISED 03/21/11

damage of not less than \$1,000,000.00 each occurrence with respect to the Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services.

17.6 Policy Requirement. The policies required by Paragraphs 17.4 (General Liability) and 17.5 (Automobile Liability) shall be endorsed to include the State of Arizona, the Arizona Board of Regents and Northern Arizona University, their agents, officers, and employees as additional insureds and shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, and Northern Arizona University, their agents, officers, or employees, if any, shall be excess and not contributory to the insurance provided by the Contractor.

17.7 Builder's Risk Insurance Builder's all risk insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Project and shall also insure finished products. Coverage shall also cover the interests of Owner and Subcontractors with respect to the Project, but it will not cover any machinery, tools, equipment, appliances or other personal property owned, rented or used by the Contractor or Subcontractors in the performance of the Work, which will not become a part of the Work to be accepted by the Owner.

The property insurance obtained under this paragraph shall ensure against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Legal Requirement, and shall cover reasonable compensation for Design Professional's and Contractor's services and expenses required as a result of such insured loss. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in the Contractor's application for payment and approved by Owner.

The Contractor shall be responsible for the deductible of each loss and shall retain responsibility, per the indemnity provisions of this agreement for any loss not covered by the builder's risk policy.

17.8 Proof of Insurance. An original certificate of insurance evidencing the coverages required herein and acceptable to the Owner shall be filed with the Owner as evidence that the policies providing the required coverages are in full force and effect prior to the Contractor's performing any work on the premises of the Owner. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify this contract or be an annual or periodic certificate stating that it covers any and all projects or work performed by the Contractor during said period and shall contain provisions that coverage afforded under the policies will not be canceled, terminated or

REVISED 03/21/11

materially altered until at least thirty (30) days prior written notice has been given to the Owner as evidenced by a return receipt signed by the Owner. Certificates of insurance should be addressed as follows:

**State of Arizona  
Arizona Board of Regents  
Northern Arizona University  
ATTN: Planning and Development  
Box 5637  
Flagstaff, AZ 86011**

Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the policies and/or endorsements required in this contract. Owner shall not be obligated to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed waiver of, Owner's right to insist on strict fulfillment of Contractor's obligations under this contract.

17.9. Failure to Provide or Maintain Insurance. Failure on the part of the Contractor to procure or maintain the required insurance shall constitute a material breach of this contract upon which the Owner may immediately terminate this contract, or at its discretion procure new or renew such insurance and pay all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Contractor to the Owner upon demand, or the Owner may offset the cost of such premiums together with interest at the appropriate rate against any money due the Contractor from the Owner. Costs for coverages maintained by the Contractor in excess of those required shall not be charged to the Owner without prior written approval of the Owner.

17.10 Authorization to Obtain Information. The Owner may, and the Contractor hereby authorizes the Owner to, request and receive directly from insurance companies utilized by the Contractor in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of the Owner.

17.11 Continuation of Insurance. Insurance coverage assuring the adequacy of the Contractor's performance and warranty obligations shall be maintained after the Substantial Completion of the project for the full two-year warranty period specified herein and any longer specific guarantee or warranty set forth in the Contract Documents. If insurance is canceled before the end of any such period and the Contractor fails to immediately procure replacement coverage as specified, the Owner may procure such insurance. Such coverage shall be for the account of the Contractor and the provisions regarding payment of Section 17.8 above shall apply. In no instance will the Owner's exercise of its option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain insurance required under the insurance provisions of this contract until the date of Final Completion and the warranty period as provided herein.

REVISED 03/21/11

17.12 Waiver. Contractor and its insurers providing the required coverages above shall and do hereby waive all rights of recovery against the State of Arizona, the Arizona Board of Regents, The University of Arizona (or ASU or NAU), and their officers and employees.

17.13 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect Owner.

17.14 Self-insurance. The policies specified herein may provide coverage which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. The Contractor shall be solely responsible for deductible and/or self-insured retention, and Owner, at its option, may require the Contractor to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

## **SECTION 18. ALLOWANCES**

18.1 If required by the Bid Documents issued by the Owner for the Work, the Contract price shall include an allowance or allowances as specified in the request for bids. The Contractor's price for the Work shall include all of the Contractor's costs associated with such allowance or allowances. If the actual costs to the Contractor of such allowance or allowances is different from the specified sum, increases or decreases in the cost of the allowance and associated Contractor's cost shall be adjusted in accordance with Section 28.3 (Changes) of this Agreement.

## **SECTION 19. INDEMNIFICATION**

19.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold the Owner and the State of Arizona harmless from any loss or damage, claim of damage, lawsuit, or loss arising from or alleged to have arisen from the negligence of the Contractor, its authorized agents, employees, officers, or subcontractors. This indemnity shall not be construed to include loss, claims, lawsuits, or claims of loss alleged to have arisen from the negligence of the Owner, its authorized agents or employees, contractors, or subcontractors.

## **SECTION 20. PROGRESS AND SCHEDULING**

20.1 Planning, scheduling and progress monitoring are essential functions of the Contractor. Within ten (10) days after the award of the Contract, the Contractor shall prepare and submit for the Owner and the DP a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The Schedule of Values shall be substantially equivalent to AIA Forms G702

REVISED 03/21/11

and G703 or as specified by Owner. In addition, Contractor shall submit Construction Progress Schedules in full accordance with the requirements and provisions located in Division 1 of the Specifications.

20.2 The Contractor shall also furnish the DP with a Narrative Report corresponding with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, fragmentary networks (fragment) of delays, and an explanation of corrective action taken or proposed. If the Project is behind schedule in any month, the Contractor's Narrative Report shall indicate precisely what measures it will take in the next thirty days to put the Work back on schedule.

20.3 The Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule, to prevent work stoppage, and to ensure completion of the Project within the Contract Time.

20.4 The Contractor shall be responsible to prepare, submit and maintain the schedules and Narrative Reports indicated above, and the failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain the schedules shall be solely the Contractor's obligation and shall not be charged to the Owner.

20.5 (NOTE: This provision is optional) As a condition precedent to the release of retained funds, the Contractor shall, after Substantial Completion of the work has been achieved, submit a final Contractor's Construction Schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all activities on the Construction Schedule.

## **SECTION 21. DAILY LOG**

21.1 The Contractor shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form approved by the DP. The Contractor shall document all activities at the Project site, including:

A. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect Work at the site;

B. Soil conditions which adversely affect Work at the site;

C. The hours of operation by Contractor and individual Subcontractor personnel;

REVISED 03/21/11



D. The number of Contractor and Subcontractor personnel present and working at the site, by subcontract and trade, and updated schedule activity number.

E. The equipment active or idle at the site;

F. A description of the Work being performed at the site, by updated schedule activity number.

G. Any delays, disruptions or unusual or special occurrences at the site;

H. Materials received at job site; and

I. A list of all visitors at the site.

21.2 The Contractor shall provide copies of the daily logs to the Owner on a weekly basis. The daily log does not constitute written notice to the Owner when such notice is required by the Contract Documents.

## **SECTION 22. MISCELLANEOUS DUTIES**

22.1 The Contractor shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor payment applications and each Subcontractor's progress payment check. The requirements of this subsection shall be provided in all contracts between the Contractor and its Subcontractors.

22.2 During construction and for five (5) years after Final Payment, the Contractor shall retain and shall also require all Subcontractors to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs, and all other matters related to the bidding and performance of the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at any time during or after construction as the Owner may request.

22.3 The Contractor shall be responsible for laying out its own Work and for any damage which may occur to work of any other contractor because of the Contractor's own errors or inaccuracies. The Contractor shall also be responsible for unloading, uncrating, storing and handling all materials and equipment to be erected or placed by it, whether furnished by the Contractor or others.

22.4 The Contractor, Subcontractors and Suppliers shall be responsible for taking all appropriate field measurements prior to fabrication and installation of any item. Such measurements shall be taken sufficiently in advance so as to avoid any delay or

REVISED 03/21/11

potential delay. Failure to adhere to this provision shall render such delays the responsibility of the Contractor.

22.5 Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, wiring, conduit, ductwork, trim and other parts required for or in connection with any item or material to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the item whether or not expressly called for by the Drawings or Specifications.

22.6 All materials shall be shipped and stored and handled in a manner that will afford protection and ensure their being in factory-new condition at the time they are incorporated in the Work. After installation, they shall be properly protected against damage or deterioration until Final Completion of the Project.

22.7 When standards and specifications issued by The American Society of Testing and Materials, the American Institute of Steel Construction, the U.S. Department of Commerce (Commercial Standards), or other technical or standard setting organizations are cited in the Contract Documents, such standards or specifications (and all related standards or specifications) shall be equally as binding and have the full force and effect as though incorporated word for word. Unless otherwise specifically stated, the standards and specifications referred to shall be the latest edition or revision of such specifications that is in effect on the date of the public bid.

22.8 Any part of the Work damaged during installation or prior to final acceptance of Work shall be repaired so as to be unnoticeable and to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished, the damaged item or part shall be replaced. After installation, all exposed surfaces and parts of an item or of the Work shall be cleaned in a manner that will not damage the finish or any of the parts of the item, so that the completed work is left in first class condition, free of all defects. All damaged or defaced Work shall be repaired or replaced to the Owner's satisfaction at the expense of Contractor.

22.9 The Contractor shall procure and furnish to the Owner all guarantees, warranties, manuals and spares that are called for by the specifications or that are mentioned in the manufacturer's product literature. Guaranties and warranties shall commence as of the date of Substantial Completion of the Project.

22.10 The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for loss attributable when a particular design, process or the product of a particular manufacturer or manufacturers is specified. If the Contractor has any reason to believe that the design, process or product specified could be an infringement of a

REVISED 03/21/11

patent, it shall be responsible for such loss unless it promptly gives such information in writing to the DP and Owner.

22.11 The Contractor shall limit its operations to the confines of the Project, except as necessary to connect to existing utilities, and shall not, without the prior written permission of the affected property owner, encroach on property outside the site. Contractor shall not permit unauthorized persons or activities on the site and shall maintain the site in a safe and secure manner.

22.12 The Contractor shall prearrange time with the DP whenever it becomes necessary to interrupt any service to make connections, alterations or relocations and shall fully cooperate with the Owner in doing Work so as to cause the least annoyance and interference with the continuous operation of the Owner's business or official duties. Any existing plumbing, heating, ventilating, air conditioning or electrical disconnections which may affect portions of this construction or building or any other building must be coordinated with the DP to avoid any disruption of operation within the building or construction or other building or utilities. In no case, unless previously approved in writing by the DP, shall utilities be left disconnected at the end of a work day or over a weekend. Any interruption of utilities, whether negligently, intentionally, or accidentally, shall not relieve the Contractor's responsibility for the interruption or from liability for loss or damage caused by such interruption even though such loss or damage was not foreseeable by Contractor or subcontractor, or from responsibility for repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workmen responsible for the repair and restoration leave the job.

22.13 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to properly clean up during construction, or if a dispute arises between the Contractor and/or separate Contractors as to their responsibility for cleaning up, the Owner may clean up and charge the costs thereof to the Contractors responsible as determined by the Owner and/or DP. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up at the completion of the work, the Owner may do so and the cost thereof shall be charged to the Contractor.

## **SECTION 23.      INSPECTION OF WORK**

23.1 All Work done and all materials are subject to inspection by the Owner and/or the DP to determine if they conform to the Contract Documents. The DP and Owner shall at all times have access to the Work, including materials being fabricated or stored off site. The Contractor shall furnish at the Contractor's cost any facilities necessary for sufficient and safe access to the Work.

REVISED 03/21/11

23.2 Inspections, tests, measurements, or other acts of the Owner and/or the DP are for the sole purpose of assisting the Owner and/or the DP in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents and/or Contractor's requests for payment. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with contract requirements nor relieve the Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection by the Owner and/or the DP shall constitute or imply acceptance or waiver of rights.

23.3 Nonconforming Work or materials may be rejected and Contractor shall correct such rejected Work without additional compensation, even if the Work or materials have been previously inspected or accepted by the Owner and/or the DP or even if the Owner and/or the DP failed to observe the unsuitable Work or materials.

23.4 Any Work required to be inspected by the DP and/or the Owner prior to being covered, which is covered up without prior inspection or without prior consent of the DP and/or the Owner, must be uncovered and recovered by the Contractor, if requested by the DP or the Owner, at no cost to Owner, notwithstanding the provisions of the following subsection.

23.5 Contractor shall notify the Owner and Design Professional in writing at least two (2) full business days prior to the time at which the Owner or Design Professional must be present to perform an inspection. Failure to provide such notice shall make the Contractor solely responsible for all consequences, including costs, of non-inspection and any required access to the Work. The following chart indicates inspection period resulting from Contractor request:

| <u>Contractor Inspection Request</u> | <u>Owner/Design Professional Inspection Period</u> |
|--------------------------------------|--|
| Monday                               | Thursday   |
| Tuesday                              | Friday   |
| Wednesday                            | Monday   |
| Thursday                             | Tuesday  |
| Friday                               | Wednesday  |

## **SECTION 24. CORRECTION OF WORK**

24.1 If any portion of the Work is covered over contrary to the request of the DP or Owner or as required by the Contract or the applicable building standards, it must be uncovered for observation at the Contractor's expense if requested by the DP or Owner in writing.

24.2 If any portion of the Work, other than those portions required to be inspected by the DP and/or the Owner prior to being covered, has been covered over,

REVISED 03/21/11

the DP or Owner may request that it be uncovered for observation. If such portion is found to be in accordance with the requirements of the Contract Documents, the cost of uncovering it shall be charged to the Owner as a Change Order. If such portion is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall bear such costs.

24.3 The Contractor shall promptly remove from the site and replace any material or correct any Work found by the DP or Owner to be defective or failing to conform to the requirements of the Contract, whether or not fabricated, installed or completed, and whether discovered before or after Substantial Completion. The Contractor shall bear all costs of correcting such Work or material, including the cost of necessary additional professional services and the cost of repairing or replacing all work of separate contractors or subcontractors damaged by such removal or correction. The DP shall notify the Contractor and Owner immediately in writing upon its knowledge that additional professional services will be necessary and of the extent and estimated costs of the additional services. The Owner, with the recommendation of the DP, may consent to accept such Work or material with an appropriate adjustment in Contract Price.

24.4 If the Contractor does not promptly replace or correct such Work or material, the Owner may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor.

24.5 If, within two (2) years after the date of Substantial Completion, any of the Work is found to be defective or not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so. If the Contractor does not promptly replace or correct such Work or material, the Owner may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor. Nothing contained in this section shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract or the law. The obligation of the Contractor under this section shall be in addition to and not in limitation of any obligations imposed by special guaranties or warranties required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.

24.6 If, during the running of a guarantee or warranty period, the Contractor must perform repair work to any portion of the Work, the running of the warranty or guarantee period is tolled from the time the defect or deficiency is discovered through the time when the Contractor successfully completes all repairs and retesting and start-up activities.

REVISED 03/21/11

## **SECTION 25. DELAYS AND TIME EXTENSIONS**

25.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the DP, or by any separate Contractor employed by the Owner, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, adverse soil conditions, unavoidable casualties, delays specifically authorized by the Owner, or by causes beyond the Contractor's control, avoidance, or mitigation, and without any fault or negligence of the Contractor or Subcontractor or Supplier at any tier, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine that such event has delayed the critical path of the Work or individual milestone or overall completion of the Work after considering the advice of the DP, if the Contractor complies with the notice and documentation requirements set forth below. The Contractor shall pay any additional fees or costs incurred by the Owner or DP as the result of delays caused by the Contractor for circumstances not excused as provided herein.

25.2 Initial notice of any delay in the Work shall be made in writing to the DP and Owner immediately but in no event later than 24 hours after discovery of the event giving rise to the delay. Then, Contractor shall provide additional details of the delay in writing to the DP and the Owner within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall absolutely bar any and all later claims. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the Contractor must give written notice every month at the same time it submits the updated progress Narrative Report to the DP. Within fifteen (15) days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and, if applicable, a formal written request covering an extension of time for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the Progress Schedule, including a fragnet and any other data demonstrating a delay in the critical path of the Work or individual milestone or the overall project completion. If the Contractor does not comply with the notice and documentation requirements set forth above, the claim for delay is absolutely barred.

25.3 If the Contractor incurs damages related to expenses caused by a delay for which the Owner is solely responsible, which is unreasonable under the circumstances, and which was not contemplated by the parties at the time of formation of this Contract, then the parties shall attempt to reach an agreement on the Contractor's claim, provided that the Contractor has notified the Owner in writing as specified above, including why the Owner is believed by the Contractor to be solely responsible for the delay. Failure to provide such timely notice shall be deemed an absolute and final waiver of any rights to additional sums. Any disputes will be resolved

REVISED 03/21/11

in accordance with the Arizona Board of Regents Policy 3-809(C), as amended or superseded, which shall be the parties' sole remedy.

25.4 The Contractor shall have no right to claim for alleged extended or unabsorbed home office overhead; claims for delays shall be limited to provable extended site costs.

25.5 The date of beginning and the time for completion as specified herein are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the notice to proceed or at a preconstruction meeting, but in no event later than ten (10) days after the execution of this Agreement, whichever first occurs. Said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. The time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any extension thereof granted by the Owner, then the Contractor does hereby agree to pay to Owner the per diem amount specified in the Contract. This amount is agreed to be liquidated damages for such breach and not a penalty therefor. The per diem amount shall be paid for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. Said sums may be withheld by the Owner from any amounts due to the Contractor from the Owner, whether as the result of this Agreement or any other obligation between the Owner and the Contractor.

25.6 The parties hereby agree that if the Contractor submits an original or updated schedule which shows the project and/or individual Milestone(s) completing earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned float available for use by both the Owner and the Contractor.

25.7 The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Contract completion date. Since float time within the Construction Schedule is jointly owned, it is acknowledged that Owner-caused delays on the project may be offset by Owner-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay

REVISED 03/21/11

damages until all Owner-caused time savings are exceeded and the Contract completion date or milestone date is also exceeded.

25.8 It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

## **SECTION 26. SUSPENSION OF WORK**

26.1 The Owner may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience. Equitable adjustment shall be made for any increase in the Contract Time necessarily caused by such suspension or delay by written Change Order.

26.2 If funds appropriated by the Legislature of the State of Arizona or from other legally permissible sources to perform the work become unavailable for payment by the Owner under this contract, the Owner may suspend construction for a period up to six months, after which date if no legal source of funds is available, this contract shall terminate at the option of the Owner. In event of such suspension or termination the Owner shall not be liable to the Contractor for damages of any kind, including lost profits.

## **SECTION 27. RIGHT TO STOP WORK**

27.1 If the Contractor fails to correct defective Work as required, or fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the Owner.

27.2 The DP may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to ensure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time under this subsection. The right of the Owner or the DP to stop the Work shall not give rise to a duty on the part of the Owner or DP to exercise this right for the benefit of the Contractor or others.

## **SECTION 28. CHANGES**

28.1 After this Contract is signed, Modifications in the Contract Price, the Contract Time or scope of the Work may only be made by written Change Order.

REVISED 03/21/11



28.2 By written directive at any time, the Owner may make any changes within the general scope of the Contract or issue additional instructions, require additional or modified Work or direct deletion of Work. The Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the Owner or DP and shall proceed in accordance with the procedures set forth in this section. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this paragraph, the Contractor hereby waives all rights or claims Contractor may have as a result of the change. The Owner's right to make changes shall not invalidate the Contract or relieve the Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of the Contractor.

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

A. By unit prices stated in the Contract Documents.

B. By cost, as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee (profit) of five percent (5%) of items 1 through 5 described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Work:

- (1) Cost of materials, including cost of delivery.
- (2) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by Contractor, and worker's or workman's compensation insurance.
- (3) Contractor Supervision/Overhead allowance of not to exceed five percent (5%) of 1 plus 2 above; the parties agree that this mark-up shall fully cover all Contractor overhead.
- (4) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, Contractor must prove reasonable rental rate pursuant to actual ownership costs.
- (5) Cost of Subcontracted work calculated as above.
- (6) Contractor's fee on subcontractor's work not to exceed five percent (5%) of the value of such work calculated as above,

REVISED 03/21/11

which sum shall exclude the cost attributable to bonds, insurance and taxes; the parties hereby agree that this fee includes all Contractor overhead and profit on subcontractor work.

- (7) Sales tax at full value; insurance and bond premiums not to exceed a total of 2%.
- (8) If this method of cost or credit calculation is selected, in no event shall the combined total fee for overhead and profit including all levels or tiers of subcontractors exceed fifteen percent (15%) of the total cost of paragraphs 1, 2, 4 and 5.

C. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; provided that such lump sum shall not exceed that amount calculated under (B) above.

28.4 If none of the above methods is agreed upon, the Contractor shall promptly proceed with performing the change, upon receipt of a written order signed by the Owner. Any dispute regarding the pricing methodology or cost of the change shall not relieve the Contractor from proceeding with the change as directed by the Owner or the DP. The cost or credit to the Owner shall be determined by the DP on the basis of the preceding subsection.

28.5 A fully executed Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the Contractor for inclusion in the Change Order is irrevocably waived.

28.6 In an emergency affecting the safety of life, or of the structure, or of adjoining property, the Contractor, without special instruction or authorization from the Owner or DP, is permitted to act at its discretion to prevent threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with this section.

## **SECTION 29. PAYMENT**

29.1 Payments on account of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the DP and the Owner by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized, shall be supported by such data substantiating the Contractor's right to payment as the Owner or the DP may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

REVISED 03/21/11

29.2 Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the Owner. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the Owner to require fulfillment of all terms of Contract Documents.

29.3 The DP, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment to the Owner for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

29.4 The issuance of a Certificate for Payment will constitute a representation by the DP to the Owner, based on DP's observations at the site and the data comprising the Application for Payment, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate of Payment, the DP shall not thereby be deemed to represent that the DP has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Price.

29.5 Payment may be withheld in whole or in part to protect the Owner on account of:

- A. Unsatisfactory job progress as determined by the Owner.
- B. Defective Work or materials not remedied.
- C. Disputed Work or materials.
- D. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
- E. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
- F. A reasonable doubt as determined by the Owner that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.

REVISED 03/21/11

G. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other agreement with the Owner.

H. Deficiencies or claims asserted by Owner against Contractor arising from any other project.

29.6 Within fourteen (14) days following the receipt of the Certificate of Payment, the Owner shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the site. The remaining 10% shall be retained by the Owner until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the Owner's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the Owner shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The Owner's sole judgment concerning the satisfactory progress of the Work shall be final.

29.7 Within sixty (60) days after the issuance of the Certificate of Final Completion by the DP and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

A. The Final Payment shall not become due until the Contractor delivers to the DP full and final unconditional releases from Subcontractors and major Suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.

B. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the Owner all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

29.8 If any payment on account of the Contract Price is not made within thirty (30) days and without just cause, interest shall thereafter accrue on the unpaid principal balance at the minimum rate allowed by state law (A.R.S. § 44-1201) on the due date.

### **SECTION 30. WARRANTY**

30.1 The Contractor warrants that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in strict conformance with the Contract Documents.

30.2 Neither provision of manufacturers' warranties nor Final Payment nor use or occupancy of all or a portion of the Premises by the Owner shall constitute an

REVISED 03/21/11

acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship.

30.3 The Contractor or its sureties shall remedy any defects in the Work and any resulting damage to the Work or the Work of others at its own expense.

30.4 The Contractor shall be liable for correction of all damage resulting from defective Work.

30.5 If the Contractor fails to remedy any defects or damage, the Owner may correct the Work or repair the damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor.

30.6 The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents.

30.7 Contractor warrants that all products delivered, systems developed, and/or services provided shall be fault-free in performance and results with respect to the processing, storage and use of dates and all date-related data.

## **SECTION 31. SUBSTANTIAL COMPLETION**

31.1 When the Contractor requests a Substantial Completion Inspection for the Work or a designated portion thereof, the DP and the Owner shall determine the validity of the request. A list of items to be completed or corrected shall be prepared by the Contractor and presented to the Owner and the DP with the request for inspection. By submitting a request for Substantial Completion Inspection the Contractor thereby certifies that it has performed a thorough inspection of the Project in preparing the list of items to be completed or corrected, has consulted with its subcontractors, and that the remaining incomplete or defective work shall be completed within thirty (30) days of submission of the request. The Owner or the DP or both shall evaluate the Contractor's request and list of uncompleted items and, if appropriate in their judgment, add to or delete items from the list necessary to complete the work. The failure to include items on any punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the remaining incomplete or defective Work required by the Contract Documents shall be completed within thirty (30) days.

31.2 If the DP and/or the Owner, on the basis of Substantial Completion inspection, determine that the Work has been substantially completed in accordance with the Contract Documents, then the DP will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion; shall state the

REVISED 03/21/11

responsibilities of the Contractor for remaining punch list items, maintenance, heat and utilities, security, and damage to the work; and shall fix the time, not to exceed thirty (30) days, within which the Contractor shall complete the punch list. The Certificate of Substantial Completion shall be submitted by the DP to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Certificate is issued irrespective of Owner occupancy. The Contractor shall reimburse the Owner, via a deductive Change Order, any and all reinspection costs, including trip charges, beyond the second inspection for Substantial Completion.

31.3 At the Owner's written request, Project Closeout Documents normally required for submission by the Contractor to the Owner for Substantial Completion may include, but are not limited to:

- A. Fire Marshal Acceptance Alarm/Sprinkler and State Fire Marshal Acceptance Report
- B. State Elevator Inspection Report
- C. Insurance Carrier Certificate for Boiler Inspection
- D. Preliminary Balance Report
- E. Preliminary As-Builts
- F. Attic Stock
- G. Substantial Completion Project Inspection (FS #15)
- H. Punchlist Issued (FS#24)
- I. Certificate of Substantial Completion (FS#81)
- J. Schedule of Required Maintenance (FS#88)

## **SECTION 32. FINAL COMPLETION AND FINAL PAYMENT**

32.1 When the Contractor submits in writing to the Owner a request for a final inspection of the Work, the DP and the Owner shall determine the validity of the request. Following the inspection, if there are items to be completed or corrected, the Owner and DP will determine the dollar value to be withheld in accordance with the retainage provisions of the Contract. In the event that the Contractor has not completed the punch list items within the time designated in the Certificate of Substantial Completion, the Owner retains the right to have these items corrected at the expense of the Contractor, including all architectural, engineering and inspection costs and expenses incurred by the DP and Owner.

32.2 The Owner shall not be required to release the retainage until such items have been completed and inspected.

32.3 At the Owner's written request, Project Closeout Documents normally required for submission by the Contractor to the Owner for Final Completion may include, but are not limited to:

REVISED 03/21/11

- A. Final Balance Report
- B. Final As-Builts
- C. First Season Commissioning Complete
- D. Second Season Commissioning Complete
- E. Operations and Maintenance Manuals
- F. Electronic Copy of All Approved Submittals and Shop Drawings
- G. Special Warranties
- H. Keys Returned (FS#10)
- I. Project Final Inspection (FS#15)
- J. Punchlist Complete (FS#24)
- K. Project Warranty (FS#80)
- L. Certificate of Final Completion (FS#81A)
- M.. Affidavit Non Use Asbestos Certificate (FS#83)

32.4 At the Owner's written request, Project Closeout Documents normally required for submission by the Contractor to the Owner for Final Payment may include, but are not limited to:

- A. Contractor Final Payment Application
- B. Final Subcontractor List (FS#82)
- C. All Subcontractor Lien Releases (FS#84)
- D. Consent of Surety to Final Payment Received (FS#88)
- E. General Contractor Lien Release (FS#89)
- F. Contractor Affidavit of Payment (FS#99)

**SECTION 33. ASSIGNMENT OF CLAIMS**

33.1 The Owner and Contractor recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by Owner. Therefore, the Contractor hereby assigns to Owner any and all claims for such overcharges. The Contractor in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the Owner.

**SECTION 34. DISPUTES**

34.1 All of Contractor's claims and disputes shall first be referred to the DP for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the Contractor knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The DP shall render a written decision within a reasonable time. The DP's decision may be reviewed in accordance with Arizona Board of Regents Policy 3-809(C), as amended or superseded, which, EXCEPT AS PROVIDED IN SECTION 34-2, shall be the parties' sole remedy. Any claim not timely filed or not complete at the time of filing is irrevocably waived.

REVISED 03/21/11

34.2 The parties agree that should a dispute arise between them concerning this Contract and no party seeks affirmative relief other than money damages in the amount of Fifty Thousand Dollars (\$50,000) or less, exclusive of interest, costs and attorneys' fees, the parties shall submit the matter to arbitration pursuant to the Revised Uniform Arbitration Act, A.R.S §12-3001 et seq. (the "Act"), whose rules shall govern the interpretation, enforcement, and proceedings pursuant to this section. Except as otherwise provided in the Act, the decision of the arbitrator(s) shall be final and binding upon the parties.

34.3 Any failure of the DP or the Owner to make a decision within the time limit set forth shall not be construed as an acquiescence in all or any part of the Contractor's claim for relief.

34.4 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any claims and controversy proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

**SECTION 35. FORUM**

35.1 No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court, and only after all contractual and administrative procedures have been fulfilled. By submitting a bid for this project, Contractor agrees to be bound by the ABOR University Procurement Code Dispute Resolution Procedures and waives any objections to those procedures.

**SECTION 36. TERMINATION BY THE OWNER**

36.1 This Contract may be terminated by the Owner under the conditions stated in A.R.S. § 38-511.

**SECTION 37. TERMINATION FOR CAUSE**

37.1 The Owner may terminate the Contract upon the occurrence of any one or more of the following events:

A. If the Contractor refuses or fails to prosecute the Work, or any separable part, with such diligence as will ensure its completion within the Contract Time; or if the Contractor fails to complete the Work within the Contract Time;

B. If the Contractor or any of its key subcontractors is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if the Contractor or any of its key subcontractors or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws

REVISED 03/21/11



concerning the Contractor or any of its key subcontractors, or if a trustee or receiver is appointed for the Contractor or any of its key subcontractors or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest or any of its key subcontractors does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days after receipt of a request for assurance from the Owner;

C. If the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment;

D. If the Contractor fails to make prompt payments to subcontractors or suppliers at any tier, or for labor, materials or equipment;

E. If the Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

F. If the Contractor fails to follow any reasonable instructions by the DP or the Owner;

G. If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

H. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents.

37.2 Once the Owner determines that sufficient cause exists to justify the action, the Owner may terminate the Contract without prejudice to any other right or remedy the Owner may have, after giving the Contractor and its Surety seven (7) days notice by issuing a written Declaration of Default. The Owner shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract.

37.3 If the Contract is terminated, the Owner may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the Owner's right to prosecute the completion of the work, the Owner may also take possession of all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

REVISED 03/21/11

37.4 If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work, and all Owner damages including liquidated damages and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor shall immediately upon demand pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work, and the Owner shall not be required to obtain the lowest figure for Work performed in completing the contract. If the Owner takes bids for remedial Work or completion of the project, the Contractor shall not be eligible for the award of such contracts.

37.5 If the Contract is terminated, the Owner may demand that the Contractor's Surety take over and complete the Work on the Contract. The Owner may require that in so doing, the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within 20 days after the demand, the Owner may take over the Work and prosecute it to completion as provided above.

37.6 The Owner shall have the option of requiring any, all or none of the Subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.

37.7 If the Owner takes over the Work, unexecuted orders entered into by the Contractor for performance of any part of the Work will be effective upon acceptance by the Owner in writing and only as to those subcontracts and purchase orders which the Owner designates in writing.

37.8 The Contractor shall be liable for any damage to the Owner resulting from the termination or from the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project over and beyond the amount of the Contract. The Contractor shall be liable for all legal fees and costs required to enforce the provisions of the Contract.

37.9 If the Owner terminates the Contract, the Contractor shall remain liable for liquidated damages for delay until such reasonable time as may be required for Final Completion of the Work. Such damages shall be in addition to and not in lieu of any other damages sustained by Owner in completing the Work.

37.10 In the event the Contract is terminated, the termination shall not affect any rights of the Owner against the Contractor. The rights and remedies of the Owner under this section are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Owner will not release the Contractor from liability.

REVISED 03/21/11

37.11 If the Contract is terminated under this section, and it is determined for any reason that the Contractor was not in default under the provisions of this Section, the termination shall be deemed a Termination for Convenience of the Owner and, the rights and obligations of the parties shall be determined in accordance with the following section.

**SECTION 38. TERMINATION FOR CONVENIENCE OF THE OWNER**

38.1 The Owner, by written notice to the Contractor, may terminate this Contract in whole or in part when sufficient appropriated or other funds are not available or in the sole discretion of the Owner it is in the Owner's best interest. In such case, the Contractor shall be paid for all Work executed and reasonable termination expenses, and a reasonable allowance for profit and overhead on Work done, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by other contract payments previously made to the Contractor and as further reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on work which was not performed.

**SECTION 39. ASSIGNMENT OF CONTRACT**

39.1 Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless Contractor has the prior written approval of the Owner and the Contractor's Surety has been given notice and has given written consent to any such assignment.

**SECTION 40. LAW TO GOVERN**

40.1 This Contract is made under and shall be construed in accordance with the laws of the State of Arizona. If any portion of this Contract is found to be unenforceable the rest and remainder of the Contract shall remain in full force and effect so as to effectuate the intent of the parties. Each party acknowledges that it has had an opportunity to review this Contract with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document.

40.2 Legal Worker Requirements: As required by Arizona Revised Statutes §41-4401 the University is prohibited after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214-A. The Contractor warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the Contractor.

REVISED 03/21/11

The Contractor acknowledges that a breach of this warranty by Contractor or by any subcontractor or sub-subcontractor under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by the University. The University retains the right to inspect the records of any Contractor, subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of the Contractor and any subcontractor and sub-subcontractor who works on this Contract, to ensure that the Contractor and each subcontractor and sub-subcontractor is complying with the warranties set forth above. The portion of this provision dealing with the Contractor's warranty is not applicable where the Contractor is a governmental entity nor is the Contractor required to pass this provision through to subcontractors and sub-subcontractors who are governmental entities.

40.3 Sudan and Iran: Pursuant to Arizona Revised Statutes § 35-397, Contractor certifies that it does not have a scrutinized business operation in either Sudan or Iran.

40.4 Veteran's Preference: Contractor agrees to provide preference in initial employment for U.S. veterans by:

- Adding points to the raw score of a numerically scored screening instrument, or
- Hiring a veteran if, at the conclusion of the search process, a veteran is one of a number of comparably qualified candidates.

For purposes of this certification, "veteran" means: an honorably separated person (honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- During any war declared by Congress;
- During the period April 28, 1952 through July 1, 1955;
- For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- During the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- For more than 180 consecutive days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or
- In a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

REVISED 03/21/11

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty. Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

**CONTRACTOR**

**OWNER**

ARIZONA BOARD OF REGENTS  
for and on behalf of  
Northern Arizona University

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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