

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Upon execution of this Agreement, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum, changes in the Design by Change Order or Construction Change Directive, changes requested by Owner, or changes required by governmental entities.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;

Init.

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents after notice of such failure by Owner and reasonable opportunity to cure the failure.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1 and through no fault of Design-Builder, the Design-Builder submits a complete and properly prepared application for payment and Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fourteen additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's actual reasonable costs of demobilization and remobilization which would not have otherwise been incurred but for the Owner's refusal to pay plus interest.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can beneficially

iniL

occupy or use the Work or a portion thereof for its intended use and Owner has received verbal approval of the governmental authority and final inspection certificate from the Design Builder's Architect or Engineer.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive punch list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion. Design-Builder shall obtain the Certificate of Occupancy within 60 days of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment (including all warranties, guarantees and other deliverables required under the Design-Build Documents), the Owner shall promptly make such inspection and, when the Owner finds the Work

init.

acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond (if satisfactory to the Owner in Owner's sole discretion) to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver only of known Claims by the Owner, reserving claims arising from or relating to:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 latent defects and claim unknown as of the date of final payment;
- .5 claims arising out of indemnification or warranty obligations hereunder, which survive this Agreement.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for all safety precautions and programs in connection with the performance of the Design-Build Contract, including compliance with OSHA and worker safety laws, regulations and ordinances, as well as security for the site, including but not limited to all Work, property and materials in and around the site. Owners contractors and forces will comply with all safety precautions and programs in connection with the Project when on site.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;

init.

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 As an affiliate of the seller of the real estate underlying the Project, Design-Builder is fully familiar with and responsible for the conditions of the Project site and shall be fully responsible for conditions are encountered at the site even to the extent that such conditions result from the presence of hazardous materials. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall undertake all necessary measures to secure the Project site, retain appropriate professionals to identify, remediate and render harmless any such materials. No increase in the Contract Sum or extension of the Contract Time shall be allowed by virtue of the discovery, presence or remediation of hazardous materials, excepting only that if hazardous materials are discovered on the site that were not known to Design-Builder or its affiliates and the presence is not the result of an act or failure to act on the part of the Design-Builder or parties under its control, no increase in the Contract sum shall be allowed, but the Owner and Design-Builder will meet and mutually consider a reasonable extension of the Contract Time, pursuant to the procedures contained in Art. 4.1.7, to allow remediation of the site and upon the discovery of any such hazardous materials, the Owner and Design-Builder will mutually work to mitigate the impact of the hazardous materials to both the Contract Sum and the Contract Time.

§ A.10.3.2 No CERCLA Liability. Each of the parties hereto further acknowledges and agrees that no agency relationship is created under this Article between Owner and Contractor and nothing herein constitutes an agreement by one party on behalf of the other to arrange for transport, treatment, or disposal of hazardous substances under Section 107 of the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any state analog thereof, as amended.

Init.

§ A.10.3.3 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner and Owner's officers, directors, subsidiaries, related companies, consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property.

§ A.10.4 Intentionally deleted.

(Paragraphs deleted)

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7, but only to the extent that such emergency was through no fault of Design-Builder or anyone for whom Design-Builder is liable.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in Ex. C, incorporated herein by reference, or as required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until two years following the date of final payment, unless Owner otherwise agrees to in writing.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning

Init.

reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Owner shall be responsible for providing certificates of insurance from its contractors and sub-contractors performing work on site naming Design-Builder and Panattoni Development Company, Inc., as additional insured and containing the same coverages required of Design-builder under this Section A.11, except builder's risk.

§ A.11.3.2 Owner shall indemnify and hold harmless Design-Builder and all its Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns (collectively, "Indemnitees") from and against any and all liability, including, but not limited to, claims, damages, losses, expenses, suits, and demands, including, but not limited to, attorneys' fees, arising out of or related in any way, directly or indirectly, to work performed by Owner's contractors, or related in any way to Owner's, its affiliates, employees, agents, assigns or its Contractors or Subcontractors' or their agents' negligent performance of the work performed on the site, provided that such claim, damage, loss or expense, is attributable to tangible property or bodily injury, sickness, disease or death, caused in whole, or in part, by any negligent act or omission of Owner's contractors or sub-contractors, their affiliates, employees, agents, assigns or, or any of their respective direct or indirect employees or agents for whose acts they may be liable. Such obligation shall not negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution that exists in favor of the Indemnitees. Such obligation to indemnify, defend, and hold harmless shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Owner or anyone directly or indirectly employed by Owner. Except as may be otherwise provided by applicable law or any governmental authority, Design-Builder's right to indemnification under this Section shall not be impaired or diminished by any act, omission, conduct, misconduct, negligence, or default (other than gross negligence or willful misconduct) of Design-Builder or any employee of Design-Builder who contributed or may be alleged to have contributed thereto. Owner shall impose identical duties upon all of its Contractors and Subcontractors.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 In addition to the coverages identified in Ex. C, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance 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, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 Intentionally deleted.

§ A.11.4.1.3 If the property insurance requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance may cover portions of the Work stored off the site and also portions of the Work in transit.

Init.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. Intentionally deleted.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 Intentionally deleted.

§ A.11.4.5 Intentionally deleted.

§ A.11.4.6 Intentionally deleted.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their officers, directors, subsidiaries, insurers, employees, consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Design-Builder's property insurance shall be adjusted by the Design-Builder and Owner jointly and made payable to the Design-Builder and Owner, jointly.

§ A.11.4.9 Intentionally deleted.

§ A.11.4.10 Intentionally deleted.

§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract. If Owner requires such bonds, Design-Builder shall be entitled to a change order in the sum of the actual costs of such bonds.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If

Int.

such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.1.3 Owner specifically reserves the right to require notice prior to certain installations so that such installations may be observed or tested by appropriate professionals, including but not limited to concrete pours and structural elements of the Work. Design-Builder agrees to cooperate by giving Owner sufficient advance notice prior to such Work to allow for observation or testing. If Owner requests such advance notice and Design-Builder fails or refuses to supply it, or fails or refuses to supply it sufficiently in advance of the Work that Owner is unable to arrange for observation or testing by appropriate professionals, such Work shall be uncovered, tested and restored in accordance with this Article 12 at Design-Builder's expense.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and restoration of such Work to "like new" condition, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty, but only for patent defects. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

Int.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1 and are nevertheless required through no fault of Design-Builder, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

Int.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The statutes of repose and limitation applicable to this Agreement shall be governed by Illinois law.

(Paragraphs deleted)

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance properly due and not disputed in good faith in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit or other damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner with the opportunity to cure, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently refuses or fails, following written notice, to supply enough properly skilled workers or proper materials after notice of such refusal or failure by Owner and reasonable opportunity to cure;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction after notice of such disregard by Owner and reasonable opportunity to cure; or
- .4 otherwise is guilty of a breach of a provision of the Design-Build Documents.

Int.

AIA Document A141™ - 2004 Exhibit A. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:57:24 on 10/29/2008 under Order No.1000340920_2 which expires on 1/29/2009, and is not for resale.

User Notes:

(2579219142)

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine, not to exceed 60 days.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 Intentionally Deleted.

§ A.15 Equal Opportunity/Nondiscrimination.

§ A.15.1 **Equal Opportunity.** It is Owners policy that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals have the maximum practicable opportunity to participate in the performance of contracts let by Owner. Design-Builder hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of the Work. Design-Builder shall, unless exempt, comply with the federal regulations, as amended, pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including, but not limited to, the following, all of which are incorporated herein by reference: (i) Affirmative Action Compliance Program (41 CFR 60-1.40); (ii) Affirmative Action - Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (iii) Affirmative Action - Handicapped Workers (41 CFR 60-741.4); (iv) Equal Opportunity (41 CFR 60-1.4); (v) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (vi) Fair Labor Standards Act of 1938; (vii) Prohibition of Segregated Facilities (41 CFR 60-1.8); and (viii) Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7). The Design-Builder shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.

§ A.15.2 **Nondiscrimination.** Design-Builder certifies that it does not and will not maintain or provide for employees any segregated facilities at any of its establishments, and that it does not and will not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. As used herein, the term "facilities" means waiting rooms, work areas, restaurants and other eating areas, time clocks, rest rooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees; and the term "segregated" means to separate individuals on a basis of race, color, religion, or national origin, because of habit, local custom or otherwise. Design-Builder understands and agrees that a breach of the certification or assurance herein contained is a violation of the equal opportunity clause required by Executive Order No. 11246 of September 24, 1965, as

init.

AIA Document A141™ - 2004 Exhibit A. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:57:24 on 10/29/2009 under Order No.1000940920_2 which expires on 1/29/2009, and is not for resale.

User Notes:

(2579219142)

amended, and subjects Design-Builder to the regulations issued by the Secretary of Labor on May 21, 1968, (33 FR 7804) constituting 41 CFR Part 60-1. Design-Builder agrees and undertakes to obtain the same or a substantially similar certification and assurance from each proposed Subcontractor before issuing any subcontract in excess of \$10,000. Design-Builder understands that this certification shall be effective and valid for one year from the effective date of the applicable Purchase Order. Design-Builder understands that the penalty for making false statements in this certification is prescribed in 18 USC 1001.

§ A.15.3 Reporting. On a quarterly basis or as otherwise agreed upon by the parties, Design-Builder shall prepare and submit to Owner a detailed report that confirms Design-Builder's utilization of diverse businesses in its subcontracting activities. The report should reflect both direct and indirect dollars spent throughout the term of these Terms and Conditions. If requested by Owner, Design-Builder shall submit to Owner current certification establishing Design-Builder as a diverse business operation.

§ A.16. Audits Unless otherwise required by Laws, Owner's representatives shall have, during the term of this Agreement and for three years thereafter, access at all reasonable times, and upon twenty-four hours notice, to all of Design-Builder's and its Subcontractors' accounts and records of any description, including but not limited to: (a) computer files; (b) records pertaining to this Agreement relating to the quantity, quality, and progress of the Work; (c) reimbursable costs; (d) amounts claimed by Design-Builder; (e) estimates of cost for fixed rates including those applicable to proposed changes; (f) determining compliance with applicable laws, codes or standards and/or any of the provisions contained in these Design-Build Documents; and (g) for any other reasonable purpose. Payment or payments shall not be deemed a waiver of any rights of Owner to audit or to have adjustments made. Design-Builder's accounts/records shall be kept in accordance with generally accepted accounting principles.

(Paragraphs deleted)

Init.

 **AIA** Document A141™ – 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Design and construction of Regional Reporting Center on approximately 4.54 acres of vacant property located at 1665 Birchwood Avenue, Des Plaines, Illinois

THE OWNER:

(Name and address)

Northern Illinois Gas Company d/b/a Nicor Gas Company
1844 Ferry Road
Naperville, Illinois

THE DESIGN-BUILDER:

(Name and address)

Panattoni Construction, Inc.
8775 Folsom Blvd., Suite 100
Sacramento, California 95825
Attn: Bob Christenson

Panattoni Construction, Inc.
6250 N. River Road, Suite 4050
Rosemont, Illinois 60018
Attn: John Wagman

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

ARTICLE C.1

(Paragraphs deleted)

This Exhibit C is incorporated into and forms a part of the Standard Form of Agreement Between Owner and Design-Builder between the parties. To the extent of any conflict between this Exhibit C and the balance of the agreement, this Exhibit C shall govern.

The Owner and Design-Builder (also referred to below as "Contractor") shall provide policies of liability insurance as follows:

1.1 General Insurance Requirements. Contractor shall provide and maintain, and shall require each Subcontractor (regardless of tier) to provide and maintain, in effect during the term of these General Conditions, and for a period of two years thereafter, the following minimum insurance coverages, which insurance shall be placed with insurance companies rated A minus VII or better by Best's Key Rating Guide and approved by Owner. Such insurance companies shall be authorized to do business in the jurisdiction in which the Project is located. Prior to the commencement of any Work, Contractor shall furnish properly executed certificates of insurance, including the required amendatory riders and endorsements. Contractor shall not make any changes in or allow the required insurance coverages to lapse without Owner's prior written approval. All insurance policies shall be endorsed to contain a provision giving Owner thirty days prior written notice by registered mail of any cancellation or non-renewal of that policy or material changes in coverage. At the time of signing these General Conditions, Owner may require Contractor to provide evidence acceptable to Owner that demonstrates that Contractor will be able to secure the insurance required by these General Conditions. Owner reserves the right, at its own cost, to require Contractor to provide and maintain additional coverages in the event that the particular Work involves unusual risks. If any of the required insurance coverages contain aggregate limits applying to other operations of Contractor outside Work performed for Owner pursuant to any Purchase Order or other Agreement and such limits are diminished by an incident, occurrence, claim, settlement or judgment against such insurance, Contractor shall take immediate steps to restore such aggregate limits but only to the limits required under these General Conditions or shall provide such other insurance protection for such aggregate limits. If, in order to satisfy the insurance requirements hereunder, any Subcontractor incurs reasonable additional insurance premiums to increase any of its insurance coverages above a policy limit of \$1,000,000, Owner agrees to enter into a Change Order under the Contract Documents to adjust the Contract Sum for the amount of such reasonable additional premiums or proceed in accordance with A.11.2.2.

1.2 Insurance Required For All Projects.

(a) Worker's compensation insurance with statutory benefits and limits, as required by the state in which the Work is to be performed. Such insurance shall contain benefits and limits in full compliance with all state and federal requirements. It shall also include Broad Form All States and Voluntary Compensation Endorsements and Employer's Liability insurance with limits of not less than \$2,000,000 per accident, \$2,000,000 per disease and a \$2,000,000 policy limit on disease. If coverage is obtained from a state fund, Contractor will purchase "Stop Gap" coverage, with minimum limits of \$2,000,000 per occurrence, from a commercial insurer meeting the requirements of this Article.

(b) Automobile liability insurance for owned, non-owned, leased and hired vehicles with a combined single limit per occurrence for bodily injury and property damage of not less than \$2,000,000.

(c) Commercial general liability insurance (CGL) with coverage consistent with ISO CG 0001 (10/98) in the following amounts: \$2,000,000 bodily injury and property damage combined single limit per occurrence; \$2,000,000 personal injury/advertising injury; \$2,000,000 products/completed operations aggregate; and \$2,000,000 general aggregate per project. The CGL policy shall have a per project endorsement to require these limits to apply only to each individual Project. Products/completed operations coverage shall be maintained for four years after final payment for the Project.

(d) Contractor is responsible for obtaining Builder's Risk insurance sufficient to cover the total cost of the project until project is accepted by Owner. Owner will be responsible for payment of the deductible up

Init.

to 5% and 2% of the property value for the earthquake and flood coverages, respectively, for all losses sustained.

(e) The insurance limits required by this Section 1.2 may be satisfied by a combination of primary and excess policy coverages.

1.3 Insurance Required for Designated Projects.

(a) Professional liability insurance: Contractor, its Architect and Engineer shall purchase professional liability insurance with a combined single limit, including umbrella coverage, of not less than \$1,000,000 per occurrence.

1.4 Additional Insureds. All liability insurance policies shall name Owner, its officers, directors, employees, agents, successors, and assigns as additional insureds ("Additional Insureds"), shall provide coverage for their liability arising out of Contractor's Work, and shall maintain the required coverages for a period of not less than two years from the date Owner and Contractor execute a Form of Final Completion. Contractor shall cause its Subcontractors to name Owner, officers, directors, employees, agents representatives, subsidiaries, successors, and assigns as additional insureds on all policies (except workers compensation, employers liability and professional liability). Compliance shall be evidenced by a certificate of insurance and a copy of the additional insured endorsement from any Subcontractor retained by Contractor that shall comply with these General Conditions and be made available to Owner upon request. Except for worker's compensation and employer's liability insurance, Contractor agrees, with respect to all insurance provided or required in connection with these General Conditions, to endorse or require each policy to: (a) stipulate that such insurance is primary and is not additional to, or contributing with, any other insurance carried by, or for the benefit of the Additional Insureds; (b) for the insurance described in Sections 1.2(c) and 1.2(d), add Additional Insureds as an additional insured using the following wording on the policy and any certificate of insurance: "It is agreed that the 'Persons Insured' provision of this policy is amended to include Owner, its officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns as additional insureds, jointly and severally (collectively, "Additional Insureds"), with respect to any coverage such as is afforded by this policy for its liability arising out of the Work of the Named Insured. It is further agreed that this insurance shall not be prejudiced as to the Additional Insureds by any act or negligence, error, or omission of the Named Insured as respects payment of premium, reporting of claims, or any other duties required of the Named Insured by the policy;" and, (c) for the insurance described in Sections 1.2(c) and 1.23(d), contain a cross liability/severability of interest endorsement.

1.5 Evidence of Insurance. Contractor shall provide evidence of the required insurance coverage and file with Owner's Designated Representative a certificate of insurance acceptable to Owner certifying to the foregoing coverages prior to commencement of the Work. The certificate shall not be limited to an individual Project or Purchase Order or other Agreement but shall be applicable to all Projects or Purchase Orders or other Agreements entered into between Owner and Contractor until its expiration date, if any, however, such certificate will not evidence coverage of any contractors or sub-contractors retained by Owner to provide work on the Project. If the certificate has an expiration date, the Contractor shall furnish updated insurance certificates to Owner's Designated Representative until the Work under all Projects or Purchase Orders or other Agreements is completed. Each certificate shall include: (a) the name of the insurance company, policy number, and expiration date; (b) the coverages required whether for claims made or occurrence, and the limits on each, including the amount of deductibles or self-insured retentions (which Contractor shall pay); (c) a statement that Owner shall receive thirty-days notice of cancellation or modification of any of the policies which may affect Owner's interest; (d) a statement that Owner, its Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns have been named additional insureds on all applicable policies with respect to liability arising out of the Named Insured's Work; and (e) if a vehicle is carrying Owner's Hazardous Substances, the certificate must show that the vehicle is insured for limits specified in the Motor Carrier Act of 1980, as amended.

1.6 Failure to Pay Premiums. If Contractor's insurance is canceled because Contractor failed to pay its premiums or any part thereof, or if Contractor fails to provide and maintain certificates as set forth herein, Owner shall have the right, but shall not be obligated, to (a) immediately terminate the applicable Purchase Order or other Agreement with prior notice to Contractor, (b) withhold payment of Contractor's invoices until Owner has received satisfactory evidence of Contractor's payment of insurance premiums, or (c) pay such premium to the insurance company or to obtain such coverage from other companies and to deduct such payment from any sums that may be

due or become due to Contractor, or to seek reimbursement for said payments from Contractor, which sums shall be due and payable immediately upon receipt by Contractor of notice from Owner. In the event of any failure by Contractor to comply with the insurance requirements of these General Conditions, Owner may, without in any way compromising or waiving any right or remedy at law or in equity, upon five-days written notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so, and, if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. All such costs incurred by Owner shall be promptly reimbursed by Contractor and/or may be withheld from any payment due Contractor.

1.7 Waiver of Rights. Owner and Contractor waive all rights against each other and their Affiliates, officers, directors, employees, agents, representatives, subsidiaries, successors, and assigns for recovery of damages to the extent these damages are covered by the automobile liability, commercial general liability, or umbrella liability insurance obtained by Contractor.

1.8 Waiver of Subrogation. Unless otherwise required by applicable law, all of the insurance policies (except workers compensation) that apply to this Agreement shall provide a waiver of all rights of subrogation that Contractor's insurance carrier might exercise against Owner or any Additional Insured.

1.9 Subcontractors. In the event that Contractor elects to perform a portion of the Work through the use of Subcontractors, Contractor shall require such Subcontractors to comply with the insurance requirements of this Article, subject to the provisions of A.11.2.2. Contractor shall contractually obligate its Subcontractors to promptly advise Contractor of any lapse of the requisite insurance coverages, and Contractor shall promptly advise Owner of same. Contractor assumes all liability for its Subcontractors' failure to comply with the insurance provisions of these General Conditions.

1.10 Breach of Terms and Conditions. Failure to obtain and maintain the required insurance shall constitute a material breach of contract for which Owner will have all rights and remedies set forth herein, including but not limited to, those set forth in Section 1.6 of these General Conditions, and Contractor will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court costs, and settlement expenses) resulting to Owner from such breach, unless a written waiver of the specific insurance requirement is provided to Contractor by Owner.

1.11 Non-Waiver. Failure of Contractor to provide insurance as herein required or failure of Owner to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of this Article shall not be deemed to be a waiver by Owner of any of the terms of these General Conditions, nor shall they be deemed to be a waiver of the obligation of Contractor to defend, indemnify, and hold harmless Owner as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Contractor and independent of the duty to furnish a copy or certificate of such insurance policies.

1.12 Contractor's Commencement of Work Without Insurance. Commencement of Work without the required certificates of insurance, or without compliance with any other provision of these General Conditions, shall not constitute a waiver by Owner of any rights in these General Conditions.

1.13 Accident Report. Contractor shall furnish Owner with copies of any accident reports sent to Contractor's insurance carriers covering accidents occurring in connection with or as a result of the performance of the Work under the Contract Documents or its receipt or notice of any claim by a third party, or any occurrence that might give rise to such a claim.

1.14 Contractor Obligations Not Limited. None of the requirements contained herein as to types, limits, or Owner's approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Contractor under these General Conditions, any other agreement with Owner, or otherwise provided by law.

(Table deleted)(Paragraphs deleted)(Paragraph deleted)