

**TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.
CONSTRUCTION
GENERAL TERMS AND CONDITIONS**

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CONSTRUCTION GENERAL TERMS AND CONDITIONS

1. GENERAL. These Construction General Terms and Conditions (the "General Conditions") constitute a part of the Contract Documents, as defined herein, and are intended to be interpreted as complementary with same. In the event of a conflict between or within the Contract Documents, the following Order of Precedence shall control:

Special Conditions;
Drawings and Specifications;
General Conditions;

Owner reserves the right to award other contracts for other Work on the premises, even if of similar nature, character or trade.

2. EXAMINATION OF PREMISES. The Contractor acknowledges that it has examined the Project Site and area and has compared its findings with the Drawings and Specifications and the remaining Contract Documents, and has informed and satisfied itself as to all matters necessary for its carrying out the Work; including but not limited to, general working conditions, weather conditions, labor requirements, accessibility, condition of the premises, obstructions, drainage conditions, elevations, subsurface conditions, excavating, filling, all other conditions as to character of the site and character of existing structures at or adjacent to the Project Site, and the character and extent of Owner's and other Contractors' operations in the area, and in connection with the Project, including without limitation the possible stacking of trades, labor inefficiencies, delays, acceleration and other uncertainties that could impact performance or profitability, and acknowledges that it took all these matters into account in submitting its bid. No allowance or extra payment will be made because of the Contractor's failure to make such comparison and examination or by reason of any error or oversight on the Contractor's part in making such examination.

3. DEFINITIONS.

3.1 Architect-Engineer. Owner's designated representatives engaged by Owner to perform architectural and/or engineering services.

3.2 Assigned Contractor. A Contractor who becomes a Subcontractor by virtue of its contract being assigned by Owner to another Contractor.

3.3 Contract Documents. The Contract Documents consist of the Contract (in the form of a purchase order) between Owner and Contractor, these General Conditions, Bid Instructions, Bid Clarification Sheet, Special Conditions, Drawings, Specifications, other documents listed in the Contract and Modifications issued after execution of the Contract, the Schedule of Values (as defined in Section 32.2) and the Progress Schedule (as defined in Section 38.2). A Modification is (1) a written amendment to the Contract Documents signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work. Unless specifically enumerated in the Contract, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, instructions to bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements). The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect-Engineer and Contractor, (2) between Owner and a Subcontractor (except as set forth in Section 21.5), or (3) between any persons or entities other than Owner and Contractor (except as set forth in Section 21.5).

3.4 Contractor. Any party having a direct Contract with Owner.

3.5 Contract Sum. The total dollar cost for the performance of the Work as set forth in the Contract and as may be amended from time to time by Change Order or other Modification. The Contract Documents are the entire and integrated agreement between the parties for the construction of the Work as defined therein and supersede prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification as defined above.

3.6 Drawings. The graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

3.7 General Contractor. The Contractor designated by Owner as General Contractor.

3.8 Materialman. Any party furnishing materials and/or labor required under the Contract Documents.

3.9 Owner. Toyota Motor Engineering & Manufacturing North America, Inc. (sometimes referred to as "TEMA"). Contractor acknowledges that in conjunction with the contract, TEMA (as determined by TEMA in its sole discretion) may be acting either on its own behalf, or as applicable, as agent for (i) one or more of the following legal entities: Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing Canada Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing Mississippi, Inc., Canadian Autoparts Toyota, Inc., Bodine Aluminum, Inc., TABC, Inc., and affiliates and/or related entities of TEMA (collectively referred to as "NAMCs" and each individually as a "NAMC"), (ii) such other legal entities as may subsequently be formed as additional NAMCs, and (iii) such other affiliates of Toyota Motor Corporation as may be designated by TEMA from time to time. In such event, the term Owner shall include such NAMC. TEMA and the applicable NAMC shall jointly and severally be entitled to the benefits of, and to enforce the terms of, the Contract Documents, as third party beneficiaries and Contractor acknowledges the rights of these parties under the Contract Documents.

3.10 Project. The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by separate Contractors.

3.11 Special Conditions. All special conditions identified in and included as a part of the Contract Documents, including, but not limited to, special conditions relating to accounting, environmental, insurance safety/security, supplier diversity, and any applicable Project Agreement.

3.12 Specifications. That portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

3.13 Subcontractor. Any party including its sub-tier contractors who agrees to assume a portion of a contract from a Contractor and agrees to construct a portion of the Work for which Contractor has been engaged to construct under its Contract with Owner.

3.14 Superintendent. A representative who must be present on-site at all times and have authority to act for the General Contractor (if any), Contractor or Subcontractor respectively.

3.15 Work. The construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

4. OWNER'S OPERATIONS. The Owner may during the term of the Contract elect to commence or continue its operations on the premises and to perform Work outside the scope of this Agreement. To this end, Contractor shall cooperate with Owner as to Owner's operations and performance of the Work. To avoid interference with Owner's operations and other Work, Contractor shall perform all Work at hours and in such manner and at such times as to suit Owner's convenience, and all costs in connection therewith are included in the Contract Sum. Owner will not pay, entertain, or recognize any claims by Contractor or others for increased compensation based on delay, lack of access, or other problems caused, in whole or in part, by Owner's commencement or continuation of operations on the premises during the term of the Contract, including Modifications, or by Owner's performance of Work outside the scope of this Agreement. Without in any manner limiting the foregoing, Contractor acknowledges, and will

require its Subcontractors to acknowledge, that unforeseen delays may arise as a result of (a) Owner's actions in ensuring the uninterrupted continuance of its manufacturing operations, or (b) the actions of Owner or third parties taken in connection with Work taking place concurrently on the Project. Contractor assumes the risk of such delays and has factored the possibility of such delays into its bid submitted in connection with the Project.

5. LAWS, ORDINANCES AND REGULATIONS.

5.1 Generally. Contractor shall comply with all federal, applicable state or provincial and local laws and regulations including, but not limited to those concerning equal opportunity, safety, wages and hours, sexual harassment and immigration. Without limiting the foregoing, Contractor further agrees that all goods or services provided hereunder shall be provided in compliance with the Occupational Safety and Health Act (as to the United States) and the Occupational Health and Safety Act (as to Canada and its provinces) as may be amended and including all regulations adopted pursuant thereto in effect at the time of delivery or performance of service. Moreover, Contractor shall establish appropriate procedures and controls so that the Work under this Contract will not be performed using any alien who is not legally eligible for such employment under applicable immigration laws. Contractor acknowledges and agrees that it shall be responsible for complying with the Immigration Reform and Control Act with respect to its employees. If TEMA becomes aware of any facts, which, based upon a reasonable interpretation of such events or facts, support the conclusion that Contractor may be in noncompliance with applicable immigration laws, Contractor shall, at the option of TEMA, do one or more of the following: (1) certify, in writing, that Contractor is in compliance with all applicable immigration laws; and/or (2) allow for an independent auditor, selected and paid for by TEMA, to conduct a full review and/or audit of any and all of Contractor's records relating to immigration. Said review or audit shall be conducted at reasonable times and on prior notice.

5.2 Equal Opportunity.

(a) Contractor shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, or status as a disabled or Vietnam veteran.

(b) It is the policy of Owner to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion, national origin or disability. Contractor shall comply with and contractually require all Subcontractors to comply with the following provisions and requirements relating to non-discrimination:

(1) **Equal Opportunity Clause.** All provisions of 41 CFR 60-1.4, as amended, pertaining to Equal Opportunity, are hereby incorporated by reference.

(2) **Certification of Non-Segregated Facilities.** Contractor and Subcontractors each certifies that facilities are provided for employees in such a manner that segregation on the basis of race, color, religion, or national origin cannot result; that such segregated use will not be required by written or oral policies, nor will Contractor tolerate such use by employee custom. Contractor will insure that its employees are not assigned to perform their services at any location under its control where the facilities are segregated. The term "facilities" as used herein includes waiting rooms, Work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locked rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees.

5.3 Environmental Activity and Requirements. Contractor shall not under any circumstances, cause or permit, in connection with the Work, the use, storage, holding, generation, handling, transportation, discharge, emission or release of any hazardous substance, waste, pollutant, contaminant or other substance in violation of any environmental requirement or in such manner as to necessitate environmental remediation.

"Environmental requirements" include all presently applicable and all those which may become applicable in the future, federal, state or provincial and local laws, statutes, authorizations, judgments, decrees, concessions, grants, franchises, agreements, ordinances, codes, rules, regulations, orders and other governmental restrictions and requirements regulating, related to or imposing liability or a standard of conduct concerning the environment or any hazardous substance or environmental activity including, without limitation, the following as the same may be

amended from time to time and all regulations promulgated thereunder or in connection therewith, as well as corresponding provincial, state and local requirements:

(a) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. ("CERCLA").

(b) Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6091 et seq.

(c) Clean Air Act, 42 U.S.C. §7401-7626.

(d) Water Pollution Control Act (commonly referred to as the Clean Water Act, 33 U.S.C. §1251 et seq.).

(e) Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978, U.S.C. §136 et seq.

(f) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.

(g) Safe Drinking Water Act, 42 U.S.C. §300(f) et seq.

"Hazardous substance" shall include any substance which is a "hazardous substance" (as defined in CERCLA), or any other substance or material defined, designated, classified or considered as hazardous or toxic waste, hazardous or toxic material, or hazardous, toxic, radioactive or dangerous substance under any environmental requirement and petroleum in any form.

Contractor shall at all times and at its sole expense, comply with all environmental requirements applicable to the Work and shall be responsible for compliance with all environmental requirements relating to "hazardous waste" including all substances which are or may be identified as such in 40 C.F.R. Part 261 or other applicable laws or regulations. Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and if necessary, obtain or arrange for, at its expense, all identification numbers, permits, applications and other things required in connection with the activities under the Contract Documents.

Contractor agrees that it will not store or accumulate any hazardous wastes at the Project site for periods of time or in quantities in violation of any applicable site storage limitations imposed by laws, or for any time to be specified by Owner, whichever shall be more restrictive. Contractor further agrees that it will not generate any hazardous waste materials unless such generation is expressly provided for in the Contract Documents.

Contractor agrees to take, at its expense, all actions necessary to protect third parties including without limitation, employees and agents of Owner, or Architect-Engineer from any exposure to, or hazards of, hazardous and/or toxic wastes or hazardous substances generated or utilized in Contractor's operations. Such actions shall include any and all remediation activities either required by applicable law or by Owner in its discretion, and required by Contractor's activities on the Project site. Contractor agrees to report to the appropriate governmental agencies all discharges, releases and spills of hazardous substances and/or wastes or petroleum in any form required to be reported by law and to immediately notify Owner of same. Contractor shall also immediately notify Owner if it becomes aware of the presence of any hazardous substances or of any environmental problem or liability, whether through any action or notice by governmental authorities relating to a violation or alleged violation of any environmental requirements, or otherwise.

5.4 Fugitive Emissions. Contractor shall comply with all requirements relating to Fugitive Emissions and Asphalt Paving operations pursuant to applicable federal, state or provincial laws and regulations.

5.5 Maintenance of Registrations and Licenses. Contractor shall maintain and shall cause its Subcontractors to maintain, all registrations and licenses required by the authorities having jurisdiction over the Project and shall furnish Owner with evidence of same upon request.

6. TAXES AND CONTRIBUTIONS.

6.1 *Generally.* Except as otherwise provided in Section 6.3, Contractor shall pay all federal, state and local sales, use or any other taxes now in force or which may be enacted during the process and completion of the Work.

6.2 *Payroll and Similar Taxes.* Contractor shall also be responsible for the payment of any payroll taxes, contributions for unemployment insurance, workers' compensation, old age pensions or annuities which are measured by the wages, salaries or other remunerations paid to the employees of Contractor and its Subcontractors.

6.3 *Certain Exemptions.* Where permissible by law, Owner may elect to exercise certain tax exemptions, in which event those exemptions will be designated in the Special Conditions. In the event Owner elects to obtain and utilize an exemption, resale or other certificates which would entitle Contractor to purchase labor and/or materials free of tax, Contractor agrees to and shall fully cooperate therewith, require the cooperation of its Subcontractors and Materialmen of whatever tier, and shall make such adjustments as may be necessary to reflect the absence or Owner's direct payment of sales and/or use taxes, separately identify sales tax amounts and otherwise assist Owner in developing and deriving the full benefit of any such procedures. In such event, Contractor agrees to and shall enter into such amendments to the Contract as are required by Owner to effect such sales and/or use tax procedures. Determination of the foregoing shall be at the sole option and election of Owner and in no event shall Contractor or any other party have any right to require Owner to proceed in any particular manner.

7. PERMITS AND INSPECTION FEES.

7.1 *Building and Other Permits.* Owner will furnish at its expense a general building permit. All other necessary permits or license of any type including but not limited to: mechanical and electrical permits are the responsibility of the Contractor. Contractor shall not include any fees for the general building inspections and permits. Owner has contracted directly with the governing authorities for the general building inspections and permits.

7.2 *Permit and Inspection Fees.* Except as provided in 7.1 above, Contractors and Subcontractors shall obtain and pay necessary fees required for all other permits and/or inspections required by their Work and, at the completion of the Work, shall furnish certificates of approval and/or occupancy from all governing inspection authorities.

8. OWNER'S SELECTION OF MATERIALS AND EQUIPMENT. In all cases where the choice of more than one make or style of article or material is specified, the final selection of the make or style rests with Owner. Owner may select any make or style of article or material specified in the Agreement in its sole discretion without incurring an increase in price.

9. REGULATION AND USE OF OWNER'S FACILITIES.

9.1 *Owner's Rules and Regulations.* Contractor and all Subcontractors and their employees shall be subject to and shall conform to Owner's rules and regulations governing conduct of persons while on Owner's premises. Without limiting the foregoing, by executing the Contract Documents, Contractor acknowledges receipt of, and shall comply with, Owner-generated manuals dealing with the following:

- (a) Safety/Security;
- (b) Environmental Management;
- (c) Supplier Diversity; and,
- (d) Project Agreement (if identified in Special Conditions).

9.2 Identification Badges. Identification badges will be required for all Contractor's and Subcontractor's employees entering the Owner's premises. Contractor shall cooperate with Owner in setting up this identification system.

9.3 General Rules.

(a) Contractor shall not display advertising or erect signs on the premises without approval of Owner, except to the extent required by applicable law.

(b) Smoking will be allowed only in designated smoking areas.

(c) Any damage to Owner's facilities, including but not limited to, damage to pavement, curbs, sidewalks, landscaping, structures, fences, which are not designated to be removed and which may be damaged in the performance of the Work under the Contract Documents, must be properly restored, replaced or repaired without cost to Owner.

(d) Owner's security fencing shall not be altered, removed or relocated without first obtaining written permission from Owner.

(e) No drilling or burning into structural steel is allowed unless Contractor has first obtained the written permission of Owner.

(f) Before beginning Work on Owner's premises, Contractor shall consult Owner's fire supervisor regarding established plant rules and regulations for fire protection including cutting and welding procedures. Conformance to these rules shall be mandatory.

9.4 Safety Precautions; Project Safety Rules. Without limiting Contractor's obligation to comply with the Safety/Security Manual referred to in Section 9.1(a), Contractor agrees as follows:

(a) Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performing its Work under the Contract Documents. Contractor shall coordinate and direct the safety activities of its Subcontractors so the Project is subject to unified safety precautions.

(b) Contractor and all its Subcontractors will comply with Owner's Project Safety Rules as may be adopted and amended from time to time by Owner, at Owner's sole discretion, during the construction of the Project. Contractor acknowledges receipt of a copy of Owner's current Project Safety Rules. Owner will provide written notice to Contractor of any amendments to its Project Safety Rules.

(c) Contractor will comply with Owner's Project Security Rules as may be adopted and amended from time to time by Owner, at Owner's sole discretion, during the construction of the Project. Contractor acknowledges receipt of a copy of Owner's current Project Security Rules. Owner will provide written notice to Contractor of any amendments to its Project Security Rules.

10. USE AND PROTECTION OF EXISTING UTILITIES.

10.1 Permission Required. Permission for use of Owner's utilities must be obtained in writing prior to submission of bids or proposals and included with Contractor's bid proposal.

10.2 Payment: Connections; Removal. When Contractor is permitted to use existing utilities, Contractor shall provide and pay for all wiring, piping and other materials required for its use and shall make all connections to Owner's service and disconnect and remove same at the Contractor's expense upon completion of the Work.

10.3 Protection from Damage. Contractor shall be fully responsible for the protection from damage of all utilities and underground lines whether identified in the Contract Documents or not. Any such utilities and underground lines which are not designated to be removed and which may be damaged in the performance of the

Work under the Contract Documents must be properly restored, replaced or repaired by Contractor without cost to Owner.

(a) Prior to starting Work, Contractor shall consult with Owner regarding the location of utilities and underground lines.

(b) Should Contractor encounter utilities and underground lines not identified in the Contract Documents, Contractor shall consult with Owner before proceeding with the Work. Contractor shall be responsible for relocating, restoring, replacing or repairing any such utilities without cost to the Owner.

(c) In case of public utilities, Contractor shall consult with the governing authorities concerning protection and use prior to the start of Work. Public utilities damaged in the performance of the Work shall be repaired, altered or replaced as directed by the governing authorities at the Contractor's sole cost and expense.

11. TEMPORARY FACILITIES AND UTILITIES.

11.1 Contractor to Provide. Except as provided in Paragraph 10.1, Contractor shall provide at its expense any temporary facilities and utilities required for completion of the Work unless otherwise specified in the Special Conditions. The temporary facilities and utilities shall include but not be limited to:

(a) Providing temporary construction roads, ramps and approaches as soon as possible after award of the Contract Documents and maintaining them in a serviceable and dust free condition for use by all persons performing Work in connection with the Project.

(b) Providing main ladders and runways for the performance of the Work. Subcontractors shall provide additional ladders and runways as required for the performance of their own Work.

(c) Providing field offices and other temporary structures Contractor may require. Subcontractors must provide their own offices, construction and storage sheds. The design and location of these temporary structures shall be as approved by Owner. When directed by Owner, Contractor shall remove the temporary structures and shall be responsible for Subcontractors removing their temporary structures from the premises.

(d) Providing fire protection for the field offices and other temporary structures. Contractor shall provide and place in each field office and temporary structure not less than three fire extinguishers as follows:

(1) One dry chemical type having a net chemical content of not less than 15 pounds for use on Class B fires (oil, gasoline, paint and grease) and for Class C fires (electrical).

(2) Two water-pressurized (2-1/2 gallon) for Class A fires (wood, textile, paper and rubbish).

(3) All extinguishers shall be checked once a week and maintained in first class operating condition.

(e) Providing all telephone service as may be required for its own and its Subcontractors' use.

(f) Providing near each phone at the job site, a legibly printed sign listing emergency telephone numbers including local doctor, local public fire and police departments, Contractor's first aid stations on the job, ambulance services and Owner's local plant protection and fire department.

(g) Providing suitable toilet facilities and maintaining them in a proper disinfected condition.

(h) Providing all water required in connection with the Work.

(i) Providing all compressed air required in connection with the Work.

(j) Providing temporary light and power as follows:

(1) Owner shall furnish electrical power to the job site at a location designated by Owner and shall pay for all electrical power required in connection with the Work except portable generators as may be required.

(2) Contractor shall connect at the designated points and provide and install all required transformers, meters, disconnect switches, temporary feeders and power and lighting outlets for distribution of electrical power. All feeder lines shall be protected from damage and installed to minimize interference with Work areas.

(3) The power and lighting system shall be 120 volt consisting of not less than twin weatherproof sockets (one for a 150 watt lamp and one for 150 watt power extension or additional lamp), spaced on not more than fifty foot centers each way throughout the construction area unless otherwise specified. Larger lamps shall be used for high bays as required. Additional twin sockets and lamps shall be used for other areas such as rooms, stairwells and corridors. Lamps shall be installed and maintained by Contractor. The system shall be installed so as not to interfere with the Work of the various trades and shall provide adequate distribution of light.

(4) Temporary power and lighting in excess of or in locations other than provided by Owner shall be furnished, installed and maintained at Contractor's expense (including, but not limited to all service feeders, transformers and other electrical installations required), at locations and amounts approved by Owner. All temporary installations shall be made in a manner which will not present a hazard to, or obstruct the Work on the Project.

(k) Providing temporary weather protection and heat as follows:

(1) Contractor shall be responsible for providing weather protection and temporary heat to protect all equipment and all parts of the structure from damage by inclement weather such as wind, water and freezing temperatures. This protection shall include temporary walls, partitions and protective coverings including complete enclosure of the structure or structures if necessary.

(2) Contractor shall be responsible for providing temporary space heat as required to protect the occupancy of existing and new structures and to permit the Work on the Project to continue. Contractor shall provide temporary walls, partitions, roof and wall opening coverings as required to retain the heat within the Work areas.

(3) The temporary space heating requirements are as follows:

(A) Maintain ambient temperatures as required for the proper execution of the Work but not less than 10 degrees Celsius (50 deg. F.).

(B) All temporary space heaters shall be approved and listed by Underwriters Laboratories, Inc., and shall be package type with fuel supply tanks fastened to the burners complete with safety devices. No more than one day's fuel supply for these heaters shall be stored in the location area of the heaters.

(C) Contractor shall pay all costs of furnishing, installing, operating and removing temporary heating equipment including fuel and necessary attendants. Every precaution shall be taken to prevent fires and accumulation of gases within the building.

(4) When the building has been totally enclosed and the permanent heating system, including the filtering system, is sufficiently complete to permit its safe use in accordance with all codes, the

Contractor may elect to use the permanent heating system in lieu of or in conjunction with the temporary space heating equipment. Owner will pay for all fuel used in the operation of the permanent heating system.

(5) In the event Contractor elects to use the permanent heating system it shall:

(A) Provide and pay for all necessary temporary connections and removals;

(B) Provide and/or pay for all operating attendants;

(C) Provide periodic inspections, maintenance and repairs to insure safe and proper operation of the entire system; and

(D) Prior to the final acceptance of the entire system by Owner, replace all used filters with new ones of the type or types specified. Contractor shall make and pay for all arrangements necessary for completely cleaning the entire system, including ductwork, and make all replacements and repairs as required to restore the system to a condition that will satisfy the guarantee requirements of the Contract Documents.

11.2 Removal. Contractor shall be responsible at Contractor's expense for the removal of any temporary facilities and utilities installed in connection with this project by Contractor.

12. DRAWINGS AND SPECIFICATIONS.

12.1 Owner to Furnish. Owner shall provide Contractor with two (2) complete sets of each of the following (collectively, the "Drawings and Specifications"): full size blueline drawings, full size reproducible drawings, and specifications. Contractor shall sign and file with Owner one complete set for the purpose of identifying the scope of Work upon which the Contract Documents are based at time of award.

12.2 Limitation on Use; Ownership. Drawings and Specifications furnished Contractor shall only be used by Contractor and Subcontractors on Work under the Contract Documents and shall remain the property of Owner.

12.3 Maintenance on Site. Contractor shall maintain at the site for Owner one record copy of the Drawings, Specifications, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Owner and shall be delivered to Owner upon completion of the Work.

12.4 Change Order Drawings. When changes in the Work are requested, Owner will furnish Contractor with proposed Change Orders and Drawings describing the changes. The number of copies furnished will depend on the complexity of the changes but shall in no case exceed a total of ten (10) sets. Contractor may request additional sets at the cost of reproduction.

12.5 Reference to Specifications. Specifications of national organizations, trade associations, federal and state agencies and others referenced in the Specifications shall mean the latest published revision as of the time the Contract Documents are awarded, except as specifically noted.

12.6 Complementary Nature of Drawings and Specifications. The Drawings and Specifications are intended to be complementary and all inclusive for the complete project as related to each trade or subdivision of the Work. All items of Work described by either the Drawings or Specifications shall be construed as if called for by both. The described Work shall be complete in every detail, although every item may not be particularly mentioned or shown.

12.7 Errors or Inconsistencies. Should any error or inconsistency appear in the Drawings or Specifications, Contractor shall not proceed with the Work in uncertainty but shall consult with Owner regarding

revisions to the Drawings and/or Specifications. If found to be justified, Bulletins will be issued by Owner to cover such changes. Owner expressly waives any implied warranty as to the Drawings or Specifications.

13. ASSIGNMENT OF CONTRACT DOCUMENTS.

13.1 *Assignment Prohibited.* Contractor shall not assign the whole or any part of the Work without the written consent of Owner. If written consent is granted by Owner, Contractor shall remain fully responsible and liable for the full and complete performance of the Work.

13.2 *Owner's Right to Assign.* Owner reserves the right to assign any or all contracts to a General Contractor. Assigned Contracts and Contractors will then become Subcontracts and Subcontractors. The General Contractor (if any) and each Assigned Contractor will bear the same responsibility, one to the other, as if the Assigned Contract had originally been awarded by the General Contractor to the Assigned Contractor and Owner shall be relieved from liability thereunder, provided and to the extent the General Contractor has expressly assumed such obligation in writing. The terms and conditions of each Assigned Contract shall not be altered by virtue of assignment.

13.3 *Assignment to NAMC.* In the event, that TEMA is the Owner under this agreement, Owner may at any time assign to a NAMC Owner's rights, duties or both under this Agreement and such NAMC shall be deemed to be Owner hereunder to the extent agreed to between Owner and the NAMC. Upon transfer of title to the Work and/or the Project to a NAMC, the NAMC and TEMA shall jointly and severally be entitled to the benefits, and to enforce the terms of, the Contract Documents.

14. TECHNICAL INFORMATION DISCLOSED TO OWNER. Contractor agrees not to assert any claim with respect to any technical or other information which Contractor shall have disclosed or may hereafter disclose to Owner in connection with the Work.

15. ROYALTIES AND LICENSE FEES. The Contractor shall, without additional cost to Owner, pay all royalties and license fees necessary for the full and free use and enjoyment by Owner of any inventions, articles, machines, devices, processes or methods which may be applied or incorporated as part of the Work either in the construction or use after completion.

16. PATENTS.

16.1 *Indemnity.* Contractor shall defend, protect, indemnify and hold harmless Owner, its successors, assigns, customers, and users of its products, against all suits at law or in equity, and from all damages, losses, claims and demands, including reasonable attorney's fees and costs for actual or alleged infringement of any United States or foreign patent or copyright by reason of the Work hereunder or the materials furnished by Contractor or its Subcontractors in connection with the Work. In case Owner prefers to defend such suit or suits by counsel of its own choosing, Owner shall have the right to do so, and Contractor shall cooperate fully and promptly with information and assistance with Owner's counsel, and shall pay all damages, costs and other awards finally decreed in such suits, including reasonable attorney's fees and costs.

16.2 *Notice of Claims by Owner.* Owner shall give Contractor notice of all claims and suits with reasonable promptness after receipt of any written claim or complaint and shall give Contractor information, and assistance within its control, all at the Contractor's expense, in defending such suits.

16.3 *Notice of Claims by Contractor.* In case a claim or complaint is brought against Contractor or any of its Subcontractors, of which Contractor receives notice, or a written charge of infringement such as contemplated herein is received by Contractor or any of its Subcontractors, Contractor shall immediately give Owner written notice thereof.

17. CONTRACTOR'S LIABILITY AND INDEMNIFICATION OF OWNER.

17.1 *Contractor's Assumption of Risk.* Contractor assumes all risks of injuries, death, sickness or disease to persons or damage to property used or employed on or in connection with the Work, and all risks of injuries,

death, sickness or disease to persons or damage to property wherever located, resulting from any action, omission or operation of the Contractor, or Contractor's Subcontractors or Materialmen under the Contract Documents or in connection with the Work.

17.2 Indemnity. Contractor shall indemnify, hold harmless and defend Owner, and Owner's employees, agents, consultants, servants and representatives from and against any and all claims, damages, losses, liabilities and expenses, including reasonable attorney's fees and costs, of whatever nature, caused by or arising out of any action, omission or operation of the Contractor, or Contractor's Subcontractors or Materialmen under the Contract Documents, including the negligent acts or omissions of Owner, and Owner's employees, agents, servants and representatives, or in connection with the Work attributable in whole or in part to Contractor, any Subcontractor, any Materialman, any of their respective employees, agents, servants and representatives, or any other person; provided, however, that Contractor shall not be required to indemnify Owner, or Owner's employees, agents, servants and representatives hereunder for any such claims, damages, losses and liabilities, caused solely and exclusively by the negligence of Owner, or where such indemnification is contrary to law. It is the intent of the parties that Contractor shall indemnify Owner, , and Owner's employees, agents, servants and representatives to the fullest extent permitted by law. Without in any manner limiting the generality of the foregoing indemnity, the Contractor further agrees as follows:

(a) If corrective Work is required or fines or legal costs are assessed against Owner by a government agency due to non-compliance by contractor with any laws, regulations, environmental requirements or breach of any duty contained in the Contract Documents, or if the Work of Contractor or the Work at the Project site, or any part thereof, is stopped by order of a governmental agency due to the Contractor's non-compliance with any such laws, regulations or environmental requirements, or if Owner, or the construction manager (if any) incur any loss or liability due to any breach or default by Contractor of its obligations, Contractor will indemnify and hold harmless Owner, and the Construction Manager against any and all losses, liabilities, damages, claims, costs and reasonable attorney's fees and costs suffered or incurred on account of the failure of Contractor to comply therewith.

(b) Should Owner be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the federal wage and hour law in the performance of the Work, Contractor, Subcontractor or Materialman violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall defend and hold harmless Owner in any such action or proceeding and pay and defray any damage, expense and cost of any description by reasons thereof, including reasonable attorney's fees and costs.

17.3 Contractor to give Notice. In the event of any accident or occurrence resulting in injury, death, sickness or disease to persons or damage to property, Contractor shall immediately notify Owner of the accident or occurrence and shall submit a written report within three calendar days.

17.4 Indemnity Not Limited. In claims against any person or entity indemnified under this Section 17 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

17.5 Identification of Claims at Final Payment. At the time of Contractor's final application for payment (as provided for in Section 32.19 hereof), Contractor shall identify in writing to Owner any and all outstanding claims, actual or threatened, by the Contractor, any Subcontractor or Materialman at any tier. Any claims, whether known or unknown, not specifically identified as required by this paragraph shall be deemed waived by the Contractor or any party claiming by or through the Contractor.

17.6 Costs. Contractor shall pay all costs, damages, losses, liabilities, and expenses incurred by Owner in the enforcement of this Contract, including reasonable attorney's fees.

17.7 Survival. It is expressly understood and agreed that the Contractor's obligations to indemnify, hold harmless and defend Owner and the other indemnitees hereunder shall survive the completion or earlier termination of performance under the Contract Documents.

18. CONTRACTOR INDEMNITY BONDS.

18.1 Contractor to Furnish. If so stated in the Special Conditions, Contractor shall furnish one or more performance bonds which secure the faithful performance of the Work and one or more payment bonds to assure payment of all obligations of Contractor in connection with the Contract Documents.

18.2 Amount and Form of Bond. Any bonds furnished by Contractor shall be in an amount and form acceptable to Owner, executed by a duly authorized attorney-in-fact of a surety company licensed to do business in the state, province or jurisdiction where the Work is performed and approved by Owner. The current power of attorney for the person who signs for any surety company shall be attached to such bond.

18.3 Reimbursement by Owner. Owner shall reimburse Contractor for premiums for performance and payment bonds only when such bonds are required by Owner. On each such bond the rate of premium shall be stated, together with the total amount of the premium charged. Contractor agrees to secure for the surety any acknowledgment or notice the surety or sureties may request of changes in the Contract Sum until Owner has accepted the Work of Contractor. Owner may require additional bond protection when a Contract is modified and Contractor shall obtain modification of bonds, new bonds and consents of sureties as may be required. Contractor may furnish the surety or sureties' copies of the Contractor's monthly invoices as approved by Owner.

18.4 Subcontractor Bonds. Owner will not reimburse Contractor for the cost of bonds which Contractor may require Subcontractors to post, including Assigned Subcontractors.

18.5 Other Bonds. Other bonds indemnifying Owner will be considered only upon the written request of Contractor and Owner may refuse to accept such bonds. The acceptance by Owner of any indemnity bond shall not relieve Contractor from any terms and conditions of the Contract Documents.

19. INSURANCE. Property, casualty, builder's risk, liability, workers' compensation and any other required insurance under the Contract Documents shall be provided by the parties and with coverages and limits, all as set forth in the Special Conditions. Any liability insurance required to be carried by Contractor shall include coverage for Contractor's indemnity obligations in Section 16 and Section 17.

20. SURVEYS AND PROJECT LAYOUT.

20.1 Lot Lines. Owner will establish lot lines and locate the benchmark unless otherwise specified.

20.2 Lines and Elevations. All other lines and elevations necessary for the location and construction of the Work shall be established and maintained by a competent surveyor who shall be employed and paid for by Contractor.

20.3 Discrepancies. Contractor shall compare carefully all lines and elevations given on Drawings and existing lines and elevations and shall review discrepancies with Owner as required by Section 12.7 of these General Conditions.

21. APPROVALS, SUBCONTRACTORS, MATERIALMEN AND MATERIALS.

21.1 Approval of Subcontractors. Immediately after award of the Contract Documents, Contractor shall submit to Owner written requests for approval of all Subcontractors, Materialmen and materials proposed for use. Approval requests shall indicate the involved trade section of the Specifications and shall include all technical data and brochures required for such approval.

21.2 Approval of Materials. Contractor shall secure and submit to Owner for approval four samples of materials to be used in the Work as required in the Specifications or as otherwise required by Owner.

The Contractor's submissions of samples to Owner for approval shall be accompanied by positive identifying information, including: (1) place the material is to be used and reference to the section of the Specifications calling for this material; and (2) manufacturer's name, trade name, catalog number, quality designation and other information requested by Owner. Materials delivered to the site shall be fully equal to the approved samples.

21.3 Owner Objections. Owner will reply to Contractor in writing stating whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Owner to reply promptly after completion of its investigation shall constitute notice of no reasonable objection.

If Owner has reasonable objection to any such proposed person or entity, Contractor shall submit a substitute to whom Owner has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless Contractor has acted promptly and responsively in submitting names as required.

21.4 Submission to General Contractor. When a General Contractor has been designated by Owner, all Subcontractors' materials and samples shall be submitted to the General Contractor for the General Contractor's review and coordination prior to delivery to Owner.

21.5 Subcontractor to be Bound. By appropriate written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

21.6 Assignment of Subcontracts. Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner provided that:

(a) Assignment is effective only after termination of the Contract by Owner pursuant to Section 42 and only for those subcontract agreements which Owner accepts by notifying the Subcontractor in writing; and

(b) Assignment is subject to the prior rights of the surety, if any, obligated under bonds relating to the Contract Documents.

21.7 Contractor Remains Liable. No lower-tier subcontract entered into by Contractor shall relieve Contractor of any of its liabilities or obligations under the Contract Documents, and Contractor shall be fully responsible to Owner for the acts and omissions of Subcontractors of every tier and of persons whether directly or indirectly employed by them in the performance of the subcontract or sub-subcontract. Contractor shall assure that each Subcontractor of every tier fully complies with all applicable laws and regulations pertaining to the Work or personnel employed in the performance thereof. If any portion of the Work which has been subcontracted by Contractor is not prosecuted in accordance with the Contract Documents, the Subcontractor or Sub-subcontractor shall be replaced on request of Owner and shall not be employed again on the Work. Contractor shall require that

any person, firm or entity doing any Work on or supplying any materials, equipment, tools, supplies or other items for the Project to fully comply with all applicable provisions, terms and conditions of the Contract Documents.

22. CONTRACTOR'S SHOP DRAWINGS.

22.1 Shop Drawings. As soon as possible after award of the Contract Documents, Contractor shall secure from all its Subcontractors and Materialmen uniform size shop drawings and all manufacturers' drawings and specifications required by the Specifications.

Each Contractor, Subcontractor, or Materialman shall consecutively number its drawings throughout the duration of the Project. Contractor shall coordinate all shop drawings with other trades prior to delivery to Owner. Each drawing shall be marked to identify the project including job number, trade section of the Specifications and page number, name of checker and date of transmittal.

All shop drawings shall be submitted in ample time to prevent delays of material deliveries. Drawings shall be submitted in the order in which the materials are needed without necessarily waiting for completion of all drawings before submitting part of them for approval.

22.2 Contractor to Review. Prior to submitting shop drawings, Contractor shall thoroughly check and verify that the design and engineering of Work shown on the shop drawing conforms to the intent of the Drawings and Specifications, including measurements, sizes of members, materials, details and requirements for capacity, strength, vibration and function.

Shop drawings found to be inaccurate or otherwise in error shall be corrected by Contractor, Subcontractor or Materialman responsible for the Work at no additional cost to the Owner.

22.3 Submission to Owner. After Contractor has checked and verified the shop drawings, it shall submit one transparency or, if not practical, six copies of each drawing to Owner for review.

22.4 Owner Review; Approval. After review of the shop drawings, Owner shall return to Contractor one transparency or one copy of each drawing with one of the following notations:

Approved -	Drawings thus marked indicate final action by Owner.
Approved as Noted -	Drawings thus marked indicate approval subject to corrections noted, and must be corrected and resubmitted for recording purposes.
Not Approved -	Drawings thus marked must be corrected and resubmitted.

22.5 Failure to Obtain Owner Approval. Any materials ordered or fabricated prior to receiving approved shop drawings bearing Owner's notation, "Approved" or "Approved as Noted" shall be at the Contractor's risk.

22.6 Changes. No changes shall be made on the approved shop drawings without the written consent of Owner. Owner's approval of shop drawings and manufacturer's drawings and specification is for general arrangement only unless otherwise noted, and does not relieve Contractor from full responsibility for the proper and correct execution of the Work. Where errors and omissions are discovered later, they must be made good by Contractor irrespective of any prior approvals of Owner.

23. MATERIAL INSTALLATION, QUALITY AND WORKMANSHIP.

23.1 Materials; Workmanship. The quality or fitness of materials and workmanship shall be first class in every respect. Acceptability of materials and workmanship shall rest strictly with Owner. What is usual or customary on other projects shall not be used as a basis for consideration or decision in the Contract Documents.

23.2 Contractor to Make Adjustments. Contractor shall make all necessary adjustments to its materials as required for an acceptable installation, including adjustments to fit its Work to receive or be received by the Work of others.

23.3 Faulty Materials or Workmanship. All materials or workmanship of unsound, unfit or damaged character or not in conformity with the Drawings and Specifications shall be removed, reconstructed, refinished and/or replaced immediately by the installing Contractor to the satisfaction of Owner. Each Contractor is held responsible for damages caused by it to Work or workmen including Subcontractors and representatives of material and equipment suppliers. Contractor at fault shall bear the expense of corrective Work and the cost of delays resulting therefrom. No extension of completion dates set forth in the Contract Documents shall be allowed. It is not incumbent upon Owner to give early notice of the rejection of faulty Work, unfit or damaged materials and Owner shall not bear any expense or cost whatsoever incurred by itself or any other person resulting therefrom.

24. REMOVALS, CUTTING AND PATCHING OR REPAIR WORK.

24.1 Removal and Alterations. All Work shown on the Drawings or specified as Work to be removed or altered, or as may be necessary to remove or alter, in order to permit the prior installation of the new Work, shall be done by Contractor or Subcontractor whose trade is involved.

24.2 Repair Work. All repair Work shall be performed by Contractor or Subcontractor whose trade is involved, but the cost shall be paid by Contractor or Subcontractor responsible for causing the repair Work.

24.3 Owner Approval. The written approval of Owner must be obtained prior to drilling of holes in structural steel, or cutting of openings of any size in walls, ceilings, roofs, floors or other structures, in connection with any repair Work.

(a) The drilling or cutting of any structural steel members such as beams and columns will not be permitted unless approved in writing in advance by Owner. All connections must be made with approved beam clamps, or drilled and bolted in accordance with Owner's requirements.

All bolts used in steel construction must be long enough to permit the use of one full nut and one lock washer, or one lock nut. Multiple flat washers will not be permitted. All bolt holes must be either drilled or punched. Flame cutting of bolt holes will not be permitted.

(b) No connections shall be made to concrete beams, columns and piers which do not already have inserts without the written approval of Owner.

25. OWNER'S INSPECTION.

25.1 Purpose. Owner's inspection is for the purpose of making sure that the Work called for in the Contract Documents is being properly executed. While Owner shall give Contractor all desired assistance requested in interpreting the Drawings and Specifications and furnishing additional information as needed, such assistance does not relieve Contractor of any responsibility for the proper execution of the Work.

25.2 Access for Inspection. Contractor shall provide, at all times, proper facilities for access by Owner to make on-site inspections. Should Contractor without consent of Owner cover up Work not yet inspected, Contractor, if requested by Owner, shall at its own expense uncover such Work for examination regardless of whether the uncovered Work is found to be satisfactory. When Owner otherwise requests Contractor to uncover questionable Work for examination, the related cost shall be paid by Owner if the Work is found to be satisfactory. However, if the Work is found to be unsatisfactory, Contractor shall pay the cost of the examination and replacement of the unsatisfactory Work.

25.3 Inspection Away from Project Site. Owner reserves the right to inspect any of the Work being performed away from the Project site. To insure this right, Contractor shall give Owner timely notice of where and when such Work is being performed.

26. TESTS. Except as provided in Paragraph 7.1 above, Contractor shall furnish all labor, materials and equipment required to make all performance and other tests of its Work, as required by the governing codes, regulations and the Specifications. Such tests shall be performed at no additional cost to Owner. All tests shall be performed in the presence of Owner unless attendance at the test has been waived by Owner in writing. All Work required to be tested which is to be buried underground or otherwise concealed shall be tested before being covered, and the test conditions shall be maintained for a sufficient length of time to permit adequate inspection. Contractor shall furnish Owner with test results and data upon completion of the testing.

27. SALVAGE AND REMOVAL OF EXISTING WORK AND EQUIPMENT.

27.1 Contractor to Remove. Unless otherwise specified in the Contract Documents, Contractor shall remove at its expense existing structures, materials and equipment as may be necessary to permit the proper installation of the Work. All cutting, repairing or patching in connection with these removals shall be performed without additional cost to Owner.

27.2 Property of Owner. Unless otherwise specified in the Contract Documents, all equipment and materials removed from existing buildings shall remain the property of Owner. Contractor shall protect these materials and equipment from damage and loss until Contractor has afforded Owner the reasonable opportunity for the inspection and storage of the materials and equipment and the execution of the Work, following which Contractor shall deliver the materials and equipment to a storage area designated by Owner.

27.3 Removal from Premises. No material or equipment may be taken from the premises without first securing a properly executed property pass from Owner. Boxes, cartons, or similar items, are subject to inspection by Owner.

28. COOPERATION.

28.1 Generally. Contractor agrees that anything necessary on its part and on the part of its Subcontractors to eliminate interferences and to make possible the Work of other trades is to be done as part of the Contract Documents and at Contractor's expense, including the use of Owner's facilities and utilities, and shall be done in such a manner and at such times as to avoid interference with Owner's operations.

(a) Contractor and its Subcontractors shall afford Owner and other Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work.

(b) Each Contractor and its Subcontractors when requested by Owner shall cease Work at any particular location and transfer their men to other locations, and execute such portions of the Work as required to enable others to carry on their Work without delay. Contractor shall not be entitled to any additional compensation as a result of Owner's directives pursuant to this paragraph.

28.2 Assistance to Owner. Contractor shall render all necessary assistance to Owner and, if required, shall take and furnish to Owner any levels, measurements or other information on the Work or grounds as the case may be.

28.3 Coordination. Contractor shall Work with other contractors on the same site at the same time. The coordination between Contractor and the other contractors shall be the sole responsibility of the Contractor. The Contractor shall not be entitled to any additional compensation arising out of or relating to its obligation to coordinate its Work with the Work of other contractors on the project.

28.4 Movement of Materials. If it becomes necessary at any time during construction to move materials which are to enter into the construction, or equipment and barricades which have been temporarily placed, Contractor furnishing these materials, equipment or barricades shall, when directed by Owner, move them or cause them to be moved without additional charge to Owner.

28.5 Owner's Machinery and Equipment. The Contractor agrees to allow Owner to receive, place and install machinery and equipment during the progress of the Work and to make use of any portion or portions of the building or facility which can be mutually agreed upon as being available for Owner's operations. Contractor further agrees that such placement of machinery and equipment or use of any portion of the building or facility does not evidence completion of the Work nor signify Owner's acceptance of all or any part of the Work.

29. MATERIALS AND EQUIPMENT FURNISHED BY OWNER.

29.1 Delivery to Job Site. All materials and equipment furnished by Owner for installation by Contractor shall upon delivery to the job site be unloaded, transferred, stored and fully protected by Contractor until installed. Any demurrage or similar charge incurred due to failure of Contractor to promptly unload the materials and equipment shall be the responsibility of Contractor when the items are delivered in accordance with Owner's schedule or Owner and Contractor have cooperated in establishing another delivery date.

29.2 Inspection by Contractor. Contractor shall carefully examine all materials and equipment furnished by Owner and shall promptly notify Owner in writing of any reasonably ascertainable defects or damage. Such examination shall be for the sole purpose of establishing the physical condition of such materials and/or equipment as between Owner and Contractor. In no event shall Contractor's inspection be deemed an acceptance of such items with respect to the contract between Owner and the supplier of such materials and/or equipment. Contractor shall be responsible for subsequent damage or loss until installation is completed and accepted by Owner. Any damage reasonably ascertainable by Contractor and not identified in writing at the time of receipt shall be deemed to be subsequent damage.

29.3 Failure to Report Damage. Should Contractor fail to report any visible signs of damage as required above, then all parties in interest may assume that the damage occurred while the materials and equipment were in the care, custody and control of Contractor.

29.4 Materials Off-Site. Any material furnished by Owner at an off-site location, on other than a charge basis in connection with the Contract Documents, shall be deemed as held by Contractor on consignment. All such materials not used in the fabrication of materials or equipment required under the Contract Documents shall be returned to Owner, as directed, at Owner's expense; and, if not accounted for or returned, shall be paid for by Contractor.

30. CONTRACTOR'S SUPERVISION.

30.1 Generally. Contractor shall supervise and direct the Work using its best skills and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating and controlling all portions of the Work under the Contract Documents.

Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Owner, Architect-Engineer or by inspections, tests or approvals required or performed by persons other than Contractor.

Nothing herein contained shall be construed by Contractor to mean Contractor is an employee of Owner and Contractor expressly agrees that Contractor is an independent contractor.

30.2 Superintendent. During the performance of the Work, Contractor shall identify in writing and keep on the Project site a competent Superintendent satisfactory to Owner. The Superintendent shall not be changed without the consent of Owner. Supervisors or employees of Contractors determined by Owner to be unsatisfactory shall be promptly replaced upon written request by Owner.

30.3 Representation of Contractor. The Contractor's Superintendent shall represent Contractor and all directions given to Superintendent by Owner shall be as binding as if given to Contractor. On request, all such directions will be confirmed in writing by Owner to Contractor.

30.4 Owner Representatives. Any assistance, directives or instructions of representatives of Owner shall not relieve Contractor from any responsibility of Contractor for the Work. Although a representative of Owner may have permitted or failed to identify faulty Work or Work done not in accordance with the Drawings and Specifications, Owner shall not be prevented from insisting upon Contractor correcting, replacing and fully completing the Work as specified, without adjustment to the Contract Sum.

30.5 Meetings. The General Contractor, or Contractor when a General Contractor has not been designated by Owner, shall schedule regular meetings with the representatives of the trades engaged about the premises to issue instructions and assure harmonious progression of the Work. Failure of a Contractor's or Subcontractor's supervisor to attend meetings or execute instructions of the General Contractor shall constitute a basis for dismissal from the Work. Upon request of Owner, dismissal will take effect within 12 hours and new supervision will be substituted by Contractor or Subcontractor.

30.6 Minutes. The General Contractor, or Contractor when a General Contractor has not been designated by Owner, shall record and promptly distribute detailed and accurate minutes of all regularly scheduled and special meetings. Distribution of the minutes shall be at the General Contractor's discretion but shall always include Owner.

31. CLEANING OF PREMISES.

31.1 Generally. Contractor shall be fully responsible for keeping the buildings and adjoining premises free at all times from accumulations of all rubbish, debris, broken concrete and other waste material caused by the Contractor's employees and its Subcontractors' employees and the work of each.

(a) Contractor shall take all precautions to avoid depositing earth, debris or mud on Owner's existing roads, adjacent public roads, parking areas, and other property. Contractor shall be responsible for removal of earth, debris and mud at no additional cost to Owner.

(b) No facilities or equipment of Owner may be used for trash accumulation or the hauling away from the premises without Owner's prior written approval. Owner's approval shall be secured as provided under Section 9, Regulation and Use of Owner's Facilities.

31.2 Combustible Materials. All combustible waste materials shall be removed from all buildings at the close of every work day. All other rubbish and debris shall be removed from the premises at least once every week.

31.3 Waste Containers. When performing construction activities within an operating facility, rubbish, debris and other waste material must be placed in containers at once. All containers shall be covered for removal through any area where Owner is conducting operations.

31.4 Contractor's Failure to Clean Premises. If Contractor does not clean the premises as required:

(a) Owner shall advise Contractor that in Owner's opinion the premises are not being maintained in the condition required.

(b) Should Contractor fail to initiate substantial progress toward clean-up of the premises within twenty-four hours following receipt of written notice, Owner may elect to provide the necessary labor, materials, or equipment to fulfill the necessary requirements and deduct the cost from any monies then due or thereafter due Contractor and its Subcontractors. If more than one Contractor's Work is involved, a proportionate share of Owner's cost will be charged to each Contractor and determined as follows:

(1) Costs attendant to the removal of all debris, rubbish, packaging and other waste material, which are identifiable to the activity of a specific Contractor or its Subcontractors shall be charged to that Contractor; and,

(2) Costs attendant to the removal of all other debris, rubbish, and other waste material shall be pro-rated among all Contractors on the basis on the ratio of the Work force of each (including their Subcontractors) to the total work force on the applicable area of the job site.

(c) Owner shall maintain adequate records related to the assessment of charges.

31.5 Removal of Items. As Work is completed in an area, Contractor shall remove all tools, scaffolding and surplus materials and leave the area broom-clean and shall keep such areas clear and broom-clean until turning the area over to Owner.

31.6 Glass Cleaning. Immediately before turning an area over to Owner, Contractor shall have all installed glass washed clean.

32. PAYMENT.

32.1 General Application and Invoice. Unless otherwise provided in the other Contract Documents or below, Contractor shall submit a payment application to the Owner as the Work progresses, with such application to be in proportion to the progress of the Work, as determined below, and on a form approved by the Owner.

32.2 Schedule of Values. Prior to the first application for payment under the Contract Documents, Contractor shall submit to Owner a breakdown of the Contract Sum which will aggregate the total Contract Sum and form the basis of the Contractor's applications for payment (the "Schedule of Values"). Such Schedule of Values shall be subject to Owner's approval. No payment shall be made until such time as the Schedule of Values has been agreed upon by the parties. If the parties are unable to agree on the Schedule of Values, then the Schedule of Values shall be the same as the Bid Breakdown submitted at the time the Contract Documents are entered into by the parties, or other comparable document which breaks down the Contract Sum and allocates it among the various components of the Work as determined by Owner in its discretion.

32.3 Owner's Right. Without changing the Contract Sum, Owner reserves the right to require Contractor:

- (a) To increase or decrease amounts within the price breakdown, and
- (b) To conform the price breakdown to Owner's local accounting practice.

32.4 Changes. Charges as approved by Owner for changes in the Work must as a prerequisite for payment be formally incorporated into the Contract Documents by a Change Order or other Modification.

32.5 Federal Wage and Hour Act. All Contractors, Subcontractors and Materialmen doing Work in the premises of Owner, or providing materials or equipment to be used in the performance of the Contract Documents, must agree to comply with all requirements of the Federal Wage and Hour Act regarding hours, rates and other matters, and any local, state or provincial laws or regulations applicable to the Project and relating to the foregoing, and will be held responsible for compliance.

32.6 Payment of Subcontractors; Others. Contractor agrees all funds requested in its applications for payment for the benefit of Subcontractors, Materialmen and laborers as evidenced by the Contractor's sworn statement shall be promptly paid from the funds received from Owner for each payment application to the appropriate Subcontractor, Materialman and laborers. Applications for payment shall not include amounts which Contractor does not intend to pay to a Subcontractor, Materialman or laborer because of a dispute or other reason.

32.7 Information to Subcontractors; Others. Owner reserves the right to furnish to any Subcontractor or Materialman evidence of the amounts certified in their respective account for payment to Contractor.

32.8 Further Price Breakdown. Owner may require Contractor to furnish additional segregations of the price breakdown for the purpose of allocating the Contract Sum to individual buildings, structures and/or equipment installations.

32.9 Payment on Percentage of Completion; Retainage. The Contractor's estimate of the value of labor, equipment and material in place as agreed upon and certified by Owner shall constitute the basis for the Contractor's applications for payment, including all required supporting documents. In the event of a disagreement between Owner and Contractor, the decision of Owner shall control. Upon application for payment by Contractor according to the agreed upon Contract Sum breakdown, and the Work having been performed in conformity with the Drawings and Specifications and progressing satisfactorily in Owner's judgment, Contractor shall invoice Owner for ninety percent (90%) of the value of the labor and materials in place up to the first day of the month, less the aggregate of all previous payments. Notwithstanding the foregoing, upon written request of Contractor, Owner may, at its sole discretion, decrease the retention percentage or amount, subject to any applicable statutory requirements. Further, Owner, at its sole discretion, may withhold or reduce Contractor's payment application, if Owner determines the Work has not been performed in conformity with the Drawings and Specifications or has not been progressing satisfactorily in Owner's judgment.

In the event Contractor withholds an amount greater than 10% retention from a Subcontractor, Owner shall increase the retention herein by the same amount.

32.10 Payment on Change Orders. Payment for Work performed pursuant to a Change Order shall be processed separately and not subject to retainage (unless otherwise stated in the Change Order, the Change Order is over \$100,000 or unless applicable lien legislation mandates a retainage/holdback, in which case the required retainage/holder shall be maintained), but shall otherwise be subject to all requirements set forth herein as to payment generally, except as expressly stated herein.

32.11 Materials Delivered to Premises. Materials delivered upon the premises for the performance of the Work shall not be removed from the premises without the written consent of Owner.

32.12 Form of Application. In order to standardize the method of making application for partial and final payments on the Contract Documents, Contractor will use the itemized breakdown of the original Contract Sum, as finally approved by Owner, and all Modifications (covering approved prices for changes in the Work) in the following manner:

(a) Invoice (indicate partial or final and applicable Purchase Order Number, if any)

1.	Original Contract Sum (Itemized in accordance with the agreed Contract price breakdown)	\$ _____	_____ %	\$ _____
2.	Less retention (including adjustments for Subcontractors) (Section 32.9)			\$ _____
3.	Net amount of labor and material in place (less retention) TOTAL (1 less 3)			\$ _____
4.	Less: Previous Payments (Applications minus retentions)			\$ _____
5.	Net amount due this payment application			

	(4 less 5 above)		\$ _____
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In case of an application for final payment where all Work has been completed and accepted, the retainer shall be reported as zero.

(b) As to application for progress payments for Work pursuant to Change Orders and subject to the provisions of Section 32.10, Contractor shall use the original Change Order Contract Sum as the basis for payment as follows:

- | | | |
|----|---|------|
| 1. | Original Change Order amount | \$ _ |
| 2. | Net amount of labor and material in place | \$ _ |
| 3. | Less previous Payments | \$ _ |
| 4. | Net amount due this Change Order | \$ _ |

(c) In those cases where the state in which the Work is being performed provides for payment of sales and/or use tax by Contractor, and Owner has not declared and/or issued a Tax Exemption Certificate, the Contractor must include a clause in its final invoice, similar to the statement listed below, indicating that all tax liability to the state in connection with all Work of the entire Contract Documents has been discharged. This statement must be signed by an officer of the Contractor's organization or a duly authorized delegate of the officer:

"We certify that State Sales and/or Use Tax, where applicable, has been paid to the State(s) of _____."

Contractor's Name

By: _____
 Print Name: _____
 Title: _____

32.13 Lien Waivers. Contractor's applications for payment shall be accompanied by the Contractor's sworn statement indicating the status of payments to Subcontractors, Materialmen and laborers to the date of the invoice, and setting forth the amounts due each Subcontractor and Materialman as of the date of the Contractor's invoice and waiving any lien rights of Contractor. Such lien waivers shall expressly reference that the release applies to any retainage withheld.

With the next application for a payment or within fifteen (15) days after the date of each payment to Contractor, Contractor shall submit waivers of lien signed by each Subcontractor and Materialman acknowledging payment of the amounts set forth on the sworn statement which accompanied the Contractor's invoice. Lien waivers may also be required from persons furnishing labor, materials, machinery, equipment or supplies to Subcontractors, along with any other person or entity whom would be entitled to claim a lien upon the Project as a result of the Work.

Subsequent applications for payment will not be paid until all necessary waivers of lien, in satisfactory form, have been received covering each previously paid invoice.

The Contractor's final invoice shall be accompanied by the Contractor's sworn statement, the Contractor's final waiver of lien and final waivers of lien from all Subcontractors and Materialmen who have not previously submitted a final waiver of lien, and the Contractor's identification of and indemnification against claims.

32.14 Forms of Waivers. Sample copies of the required sworn statement and waiver of lien forms are set out on Appendices C and D to these General Conditions. These suggested forms are intended to cover only Owner's minimum requirements under the Contract Documents. Contractor agrees that Owner may supplement, substitute or modify these general forms of waivers of lien as Owner may determine to be necessary or appropriate to minimize the possibility of liens being filed against the Project and to affect a valid, binding and enforceable waiver of lien.

If any Subcontractor refuses to furnish a final waiver of lien, Contractor shall, at Owner's option, furnish at no additional cost to Owner, an indemnity bond satisfactory to Owner in accordance with Section 18 entitled, "Contractor Indemnity Bonds", to indemnify Owner against any and all liens or claims which may at any time be filed or asserted by such Subcontractor.

32.15 Owner's Right to Withhold. If at any time there shall be evidence of the existence, whether or not asserted, of any lien or claim arising out of or in connection with the performance or default in performance of Contractor's obligations under the Contract Documents, or if Owner or representatives of Owner or any property of either or any property stored or installed on the premises might be or become liable for the discharge or satisfaction of a lien or claim, then Owner shall have the right to retain out of any monies due or thereafter due, in addition to all other withholdings, an amount sufficient to discharge any lien or satisfy any claim and to reimburse Owner and/or Owner's representatives for all costs and expenses including reasonable attorney's fees and costs.

32.16 Owner's Right to Apply Monies. Owner at its sole discretion shall have the right to apply to liens or claims any monies retained by Owner if Contractor does not discharge liens or satisfy claims within ten (10) days after notice, or agree with Owner to some other procedure to resolve the claims or discharge the liens. Owner's right to so apply monies retained by Owner shall include the right to pay such sums directly to the claimant(s), Materialman or Subcontractor, and such payments shall be credited against amounts due under the Contract Sum.

If the monies retained are insufficient to discharge liens or satisfy claims after payments have been made to Contractor, Contractor shall reimburse Owner for all monies paid by Owner to discharge liens and satisfy claims, including reasonable attorney's fees and costs.

32.17 Owner's Right to Nullify. Owner may withhold or nullify the whole or a part of any payment to the extent necessary to protect Owner from a loss by reason of:

- (a) Defective Work not remedied;
- (b) Failure of Contractor to make proper payments to Subcontractors or Materialmen for material, labor or equipment;
- (c) Owner's estimate that the Work cannot be completed for the balance remaining unpaid under the Contract Documents;
- (d) Damage to Work furnished or installed by Owner, another contractor, subcontractor or materialman;
- (e) Work not in conformity with the Drawings, Specifications, or other Contract Documents; and,
- (f) Work not progressing satisfactorily.

32.18 Final Payment. Contractor shall submit an application for final payment, including the amounts previously withheld, to Owner after completion of the Work by Contractor, provided Contractor has (a) fully complied with the provisions of this Section 32, (b) submitted all "As-Built Records" as required by Section 43.4, (c) fully complied with the provisions of Section 44 and (d) fully complied with all other provisions of the Contract Documents, and all Emergency Field Orders have been incorporated into the Contract Documents by Change Order. Notwithstanding the foregoing, retainage amounts may be withheld for such longer period as may be necessary to protect the Owner's interest.

32.19 Payment Not a Waiver by Owner. Any payments by Owner without requiring strict compliance with the provisions of this Section 32 shall not be construed as a waiver by Owner of the right to insist upon strict compliance with such provisions as a condition of later payments.

32.20 Acceptance of Final Payment by Contractor. By acceptance of final payment, Contractor waives any and all claims against Owner arising out of or in connection with the Work or the Project.

32.21 Interest. No interest shall be paid to Contractor with respect to any amounts withheld pursuant to this Section 32. To the extent permissible, Contractor and Owner expressly waive any and all rights and obligations they may have under any state or local law concerning the escrow of retained funds or interest thereon.

32.22 Payment Terms.

(a) **Generally.** Owner will pay Supplier for amounts owed to Supplier for conforming Items accepted by Owner (the "Supplier Payables").

(b) **Payment Procedures.** Payment of Supplier Payables will be in accordance with such processes, procedures and payment systems as are designated by Owner in its sole discretion (collectively, the "Payment Procedures"), including, without limitation, the electronic invoice presentment and payment system (the "EIPP System"). Payment Procedures also include provisions for additions to and offsets against Supplier Payables arising in the ordinary course of dealing between the parties.

(c) **Conforming Invoice.** Supplier agrees to (i) invoice Owner for Supplier Payables in strict conformity with the applicable Payment Procedures (a "Conforming Invoice") and (ii) accept payment for such Supplier Payables at the times and in the amounts determined by the applicable Payment Procedures.

(d) **Payment Terms.** All Supplier Payables shall be paid in accordance with the payment terms set forth below (the "Designated Payment Terms") and otherwise in conformity with the applicable Payment Procedures.

(1) **Outside the EIPP System.** The Designated Payment Terms for Supplier Payables which are not eligible for payment in the EIPP System will be either (i) on or before the 25th day of the month following the month in which the Conforming Invoice is received ("Net 25th Prox"); (ii) 45 days following the date of any Conforming Invoice from Supplier ("Net 45 days"); or (iii) as otherwise set forth on the applicable Contract Documents, as determined by Owner in its sole discretion.

(2) **The EIPP System.** The Designated Payment Terms for Supplier Payables which are eligible for payment under the EIPP System will be (i) Net 45 days or (ii) as otherwise designated by Supplier in the EIPP System.

(e) **Payment Obligation of Owner.** Notwithstanding any other provisions of the Contract Documents to the contrary, Owner will have no obligation whatsoever to make any payment on Supplier Payables, unless and until Owner is in receipt of a Conforming Invoice with respect to the Items at issue.

(f) **Applicable Currency.** All payments due to Supplier under the Contract Documents shall be paid in United States Dollars or such other currency as evidenced by the Contract Documents.

(g) **Audit.** Supplier agrees to allow Owner or its agents, at all reasonable times, access to all pertinent bookkeeping and accounting information, as reasonably requested by Owner, for the purpose of auditing Supplier Payables as invoiced to Owner under the Contract Documents. Supplier also agrees to allow Owner or its agents to make copies of those portions of its records that Owner deems reasonably necessary for its audits, and further agrees to use commercially reasonable efforts to keep copies of such records for a period of 5 years after payment of the corresponding Supplier Payables. Supplier's information provided to Owner under this *Subsection* (g) shall be protected as Confidential Information under these Terms.

33. PREMIUM OR OVERTIME WORK.

33.1 Generally. Contractor included in its base bid all premium time or overtime required to properly man the job, meet its established schedules, make all necessary tie-ins or cut-overs and avoid interferences with Owner's operations.

33.2 Overtime at Owner's Request. In the event Owner requests Contractor in writing to Work additional premium or overtime, the Contractor shall Work such additional hours or shifts required to comply with Owner's request. The following requirements will govern compensation for such additional premium or overtime but shall not apply to overtime required to be worked in order to meet schedules established in the Contract Documents:

(a) Contractor will submit a statement of charges for Owner's records covering the premium or overtime Work in connection with each written authorization of Owner. This statement shall list the working employees by name, trade classification, hourly rate and premium or overtime hours worked, and shall be supported by daily time sheets signed by Owner;

(b) Each statement of charges must be submitted in three copy form. If Owner determines such premium or overtime is compensable, Owner will only reimburse Contractor for the premium portion of pay, applicable fringe benefits and taxes, and Federal and State unemployment and insurance contributions. No overhead and/or profit will be allowed;

(c) Contractor shall submit to Owner, with the first premium or overtime hours statement, satisfactory evidence of hourly base rates, unemployment and insurance contribution rates and applicable taxes and fringe benefits for itself and any Subcontractor performing premium or overtime Work. A statement from the State unemployment agency or a copy of the applicable State unemployment rate may be submitted setting forth the experience rate; and,

(d) Owner reserves the right to audit the Contractor's statements of charges for premium or overtime Work and Contractor agrees to record these statements of charges in a manner to assist Owner's audit.

33.3 Report to Owner. All hours to be worked for which premium labor rates are to be paid shall be reported to Owner at least 48 hours in advance of the scheduled performance of the Work. Written approval must be given by Owner to Contractor before such Work is to be performed. This applies to all premium or overtime Work whether scheduled by Contractor, its Subcontractors or requested by Owner.

Casual overtime, such as may be required to complete concrete placement and finishing, is the Contractor's responsibility and shall not result in any increase in the Contract Sum, and may be performed without prior notification to Owner.

33.4 Subcontractors to Comply. Contractor shall require all its Subcontractors to comply with the terms and conditions set forth in this Section 33.

34. DISCHARGE OF LIENS. In the event any mechanics' or materialmens' lien is filed against any property of Owner for services or labor performed or materials, machinery and equipment furnished in connection with the Project by Contractor or any Subcontractor or Materialman, Contractor agrees to take any and all steps necessary and proper for the release and discharge or bonding of such lien in the manner required or permitted by the laws of the applicable jurisdiction on receipt of demand from Owner, and in default of performing such obligation, agrees to reimburse Owner, on demand, for all monies paid by Owner in the releasing, satisfying and discharging of such liens, including reasonable attorneys' fees and court costs as disbursements.

35. CHANGES IN THE WORK.

35.1 Generally. Owner shall have the right at any time to require alterations in, additions to and deductions from the Work required by the Contract Documents without rendering void the Contract Documents.

All changes in the Work shall be completed within the time schedule set forth in the Contract Documents, as may be amended pursuant to this section.

When changes in the Work are requested, Owner will furnish or cause the Architect-Engineer to furnish Contractor with Bulletins and Drawings describing the change. The number of copies furnished will depend on the complexity of the change, but shall in no case exceed a total of 10 sets. Contractor may request additional sets at Owner's cost of reproduction.

All changes shall be described in an Emergency Field Order or Bulletin. Receipt of Drawings or verbal orders shall not constitute authority to proceed with changes in the Work. An Emergency Field Order is a written directive from the Owner which authorizes Contractor to proceed immediately with the Work described therein with the price and schedule impact (if any) to be determined.

A Bulletin is a request for quotation. Contractor shall not proceed with the Work described in the Bulletin until the Work is authorized by:

(a) An Emergency Field Order, or

(b) Contract Change Order. A Change Order is a written directive from Owner setting forth the change in the Work, and identifying any resulting change in either the Contract Sum and/or the Progress Schedule.

35.2 Change Order Percentage Fees - Contractors. Except as otherwise provided in Section 35.4, if stated in the Contract Documents unit prices shall govern for authorized changes in the Work. When authorized changes in the Work are not covered by unit prices, Contractor will be paid for completed Work in place relating to changes on the basis of Estimated Cost Plus Percentage Fees (as described in Section 35.4(b)) or on the basis of Cost Plus Percentage Fees (as described in Section 35.4(c)), at the option of Owner. Such option may be exercised at any time by Owner and the selection of one option for some authorized changes in the Work shall neither preclude nor require the selection of the same option for other authorized changes. If the Contract Documents do not expressly provide for percentage fees, the percentage fee to be included in the compensation to be paid for changes in the Work shall be subject to approval by Owner.

The percentage fees to be paid for changes in the Work performed by the Contractor's own forces shall be as follows:

(a) **Overhead and Profit.** The percentage fee set forth in the Contract Documents as the Contractor's fee for overhead and profit shall constitute all of its charges for overhead and profit relating to the change, both direct and indirect, including but not limited to insurance premiums, supervision not continuously employed at the job site, the services of the Contractor's general office organization and field office expense, and the use of tools or equipment required to perform the change in the Work and having an original cost basis of less than \$1,500.00 per unit. This percentage fee for overhead and profit shall only be applied to the cost of labor and materials described as follows:

(1) The cost incurred by Contractor for all labor required to perform the change in the Work, including the superintendent or engineers continuously employed at the job site. The cost of labor for this purpose shall not include insurance, taxes or fringe benefits such as but not limited to: vacation allowance, travel allowance and welfare funds, all of which are provided for under the percentage fee for Insurance, Taxes and Fringe Benefits (Labor Only), described below; and,

(2) The cost incurred by Contractor for all materials required to perform the change in the Work shall be net after cash, trade and other discounts. The cost of materials shall not include Owner furnished materials and equipment, manufactured items of operating equipment or fabricated materials worked to a specific design required by the Drawings and Specifications or for which shop drawings are required.

(b) Insurance, Taxes and Fringe Benefits (Labor Only) - The percentage fee set forth in the Contract Documents as the Contractor's fee for insurance, taxes and fringe benefits applicable to labor only shall constitute all its charges for insurance, taxes and fringe benefits relating to the change, both direct and indirect, including but not limited to, workman's compensation insurance, payroll taxes, vacation and travel allowances and health and welfare funds, and shall only be applied to the cost of labor and materials incurred by Contractor in connection with the change, as described above.

(c) Sales/Use Taxes. The percentage fee set forth in the Contract Documents as the Contractor's fee for Sales/Use Tax shall consist of the actual amount of tax in force and shall be applied separately to the cost of labor and materials, described above, incurred by Contractor relating to the change except when such materials and/or labor are exempt from Sales/Use Tax as provided for in the Special Conditions.

(d) Handling Fees (Work performed by other than the Contractor's own forces) - The percentage fee set forth in the Contract Documents as the Contractor's handling fee shall apply to:

- (1) Price approved by Owner for changes in the Work performed by Subcontractors;
- (2) Cost of manufactured items of operating equipment; and
- (3) Cost of fabricated materials worked to a specific design required by the Drawings and Specifications or for which shop drawings are required and the equipment or fabricated materials have been installed by the Contractor.

This fee shall constitute all the Contractor's charges for overhead and profit relating to Work performed by other than the Contractor's own forces in connection with a change, including but not limited to: supervision, the services of its general office organization and field office expense. The handling fee shall not be applied to the cost of Owner furnished materials and equipment or to Work performed on a unit price basis except for the unit prices established in assigned contracts.

(e) Other - The percentage fees set forth in the Contract Documents as "Other" percentage fees are fees peculiar to a particular project because of local laws or conditions, and shall only be applied to the cost of labor and materials incurred by Contractor in connection with the change, as described above.

35.3 Change Order Percentage Fees - Subcontractors. When authorized changes in the Work are not covered by unit prices, Subcontractors will be paid for completed Work in place relating to changes on the basis of Estimated Cost Plus Percentage Fees or on the basis of Cost Plus Percentage Fees, at the option of Owner. Such option may be exercised at any time by Owner and the selection of one option for some authorized changes in the Work shall neither preclude nor require the selection of the same option for other authorized changes.

The percentage fees for changes in the Work to be performed by Subcontractors shall conform to the respective definitions and applications set forth above as fees for changes in the Work performed by the Contractor's own forces. If the Contract Documents do not expressly provide for percentage fees, the percentage fee to be included in the compensation to be paid for changes in the Work shall be subject to approval by Owner.

35.4 Methods of Evaluation. All quotations submitted by Contractor for changes in the Work shall be based on Unit Prices, Estimated Cost Plus Percentage Fees or a combination thereof, and shall be itemized in detail to facilitate checking by Owner. Owner, at its sole discretion, may direct Contractor to proceed with the change in the Work on the basis of the Contractor's Cost Plus Percentage Fees, even if (a) the Contract Documents expressly provide for Unit Prices for changes in the Work and/or (b) Contractor submits a quotation based on Unit Prices, Estimated Cost Plus Percentage Fees or a combination thereof.

(a) Method No. 1 - Unit Prices Except as otherwise provided above, unit prices, if stated in the Contract Documents, shall govern for changes in the Work. Unit prices shall include all the Contractor's charges for Work completed in place, including overhead and profit.

(b) Method No. 2 - Estimated Cost Plus Percentage Fees

(1) The Contractor's quotations for changes in the Work to be performed on an Estimated Cost plus Percentage Fees basis shall be submitted within twenty-one (21) calendar days from the date of request for quotation unless otherwise stated in the request.

(2) Each quotation shall be submitted in sufficient detail together with adequate supporting information to facilitate checking by Owner as follows:

(A) Applicable unit price Work.

(B) Estimated labor and material costs and expenses itemized to include:

(i) Labor performed by the Contractor's own forces including its superintendent and engineers continuously employed on the site;

(ii) Material costs;

(iii) Transportation; and,

(iv) The use of tools or equipment having an original cost basis of more than \$1,500.00 per unit.

(C) Applicable percentage fees set forth in the Contract Documents.

(D) Subcontract Work (including applicable Subcontract percentage fees).

(E) Manufactured items of operating equipment.

(F) Fabricated materials worked to a specific design required by the Drawings and Specifications or for which shop drawings are required.

(3) Where changes involve both additions and deductions, the estimated costs of the Work added and deducted shall be balanced against each other and the Contractor's or Subcontractor's percentage fees shall be applied to the net result.

(4) Should Owner authorize Contractor to proceed with changes in the Work pending submission of a price based on Estimated Cost Plus Percentage Fees, Contractor shall proceed, and shall require each of its Subcontractors to proceed, with changes in the Work on the basis of Cost Plus Percentage Fees until Owner accepts the Contractor's Estimated Cost Plus Percentage Fees price for the Work involved.

(c) Method No. 3 - Cost Plus Percentage Fees

(1) Owner may elect to have changes in the Work performed on the basis of the Contractor's Cost Plus Percentage Fees. When so directed in writing by Owner, Contractor shall proceed, and shall require its Subcontractors to proceed, with changes in the Work on this basis.

(A) Applicable percentage fees set forth in the Contract Documents.

(B) Labor costs shall include employees continuously employed at the site including the Contractor's Superintendent, and engineers based on the base wage rates for each classification, but

shall not include insurance, taxes or fringe benefits. When required by trade agreement, travel time will be paid on a fixed rate basis.

(C) Material costs and expenses less all cash, trade and other discounts itemized to include:

(i) Material costs;

(ii) Transportation; and,

(iii) The use of tools or equipment having an original cost basis of more than \$1,500.00 per unit.

(D) Subcontract Work (including applicable Subcontractor percentage fees).

(E) Overtime Work when applicable (if overtime Work is involved in the charge, payment therefor will be in accordance with Section 33 of these General Conditions).

(F) Manufactured items of operating equipment.

(G) Fabricated materials worked to a specific design required by the Drawings and Specifications or for which shop drawings are required.

(H) Sums paid by Contractor for royalties, permits and inspection fees.

(2) Where changes in the Work involve both additions and deductions, the cost of the added Work shall be balanced against the estimated cost of the deleted Work and the Contractor's or Subcontractor's percentage fees shall be applied to the net result.

(3) Items of cost shall not include the expense of making good any damage to the Work or premises and the removal and replacement of materials or Work rejected or condemned by Owner as failing to conform with the requirement of the Drawings and Specifications.

(4) Owner reserves the right to audit as follows:

(A) Owner may audit the Contractor's pertinent records for the purpose of auditing the charges and/or allocations related to the Work performed under Method No. 3; and,

(B) Contractor further agrees for this purpose to preserve all of the applicable documents for a period of not less than one year after final payment.

36. PROCEDURE FOR ALLEGED CHANGE IN COST.

36.1 Owner Consent Required. Should Contractor perform any Work or should it proceed in any manner which it may subsequently allege has caused it increased cost, damage or loss, purporting in each case to have acted upon verbal instruction or with tacit consent or acceptance or approval other than written from the Owner, Contractor shall be held to have done so at its own peril and Contractor shall have no claim against Owner on account of the alleged increased cost, damage or loss.

36.2 Procedures. If Contractor shall contend that any directions given to it by the Owner which would entitle Contractor to a claim pursuant to the Contract Documents, Contractor shall, except in the situation of an emergency, notify Owner within two (2) days of the receipt of such directions. Contractor shall not proceed with the directions or with the Work affected thereby until Contractor has received in writing acknowledgment of the claim and instructions from Owner. Contractor shall comply with the written instructions, and unless the claim is finally

disposed of by the acknowledgment and instructions, compliance shall be without prejudice to the rights of Contractor and Owner. In the event of an emergency, Contractor shall proceed with the Work necessary and shall keep accurate and complete records of the costs of the Work, which records shall be presented to Owner as soon as the emergency ceases to exist.

36.3 Notice to Owner. If Contractor shall contend during the performance of the Work, that Contractor is entitled to payment from Owner for increase in the cost of the Work, damage or loss because of any action or omission of Owner or others engaged by Owner, Contractor shall not delay its Work on account thereof and shall, within seven (7) days after the first observance of the occurrence, notify Owner, in writing, of the amount of its claim and all details in connection with its contention.

36.4 Owner Response to Claims. Within seven (7) days after receipt by Owner of the Contractor's written notice of claim, Owner shall, in writing, acknowledge receipt of the notice. At the time of this acknowledgment or within a reasonable time thereafter, Owner shall certify or deny the validity of the Contractor's claim, Contractor shall furnish all information requested by Owner to assist it in making its decision.

36.5 Condition Precedent. It is a condition precedent to the consideration or prosecution of claims by Contractor that the foregoing provisions be strictly observed in each instance, and if Contractor fails to comply, Contractor shall be deemed to have waived the claim. Neither the provisions of this Section 36 nor the acknowledgment of the receipt of any claim by Owner shall constitute admission on the part of Owner that any claim is valid.

36.6 Subcontractors Bound. By inclusion in the subcontract agreement or other written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor to provisions substantially similar to this Section 36 and to assume toward Contractor all the obligations and responsibilities which Contractor, by this Section 36, assumes toward Owner. Contractor shall promptly forward to Owner a copy of any claims Contractor receives from any Subcontractor (or Sub-subcontractors at any tier) under this provision. Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors, who shall similarly pass along similar obligations and responsibilities of this Section 36 to persons contracting with them, so that Sub-subcontractors at every tier are bound by provisions substantially similar to this Section 36.

37. ACCOUNTING RECORDS.

37.1 Maintenance of Records. Contractor shall keep in separate accounts, a full, accurate and careful record of all labor employed on, about or in connection with the Project and shall keep accurate and careful records of all materials purchased by Contractor.

37.2 Access by Owner. Owner shall have access at any reasonable time to Contractor's job books, records, receipts, correspondence and accounts insofar as they relate to matters covered by the Contract Documents and Contractor agrees to preserve such materials and documents for no less than four (4) years after completion of the Project.

38. PROGRESS SCHEDULE AND TIME OF COMPLETION.

38.1 Commencement of Performance. Contractor shall start performance of the Work as soon as notice to proceed is given by Owner and carry the Work to completion on or before the time set forth in the Contract Documents because, as to the Contractor's performance, time is of the essence.

38.2 Progress Schedule. Prior to the first application for payment under the Contract Documents, Contractor shall submit to Owner a detailed incremental progress schedule for the Work (the "Progress Schedule"). The Progress Schedule shall be prepared in accordance with the "Critical Path Method" or other scheduling technique as may be approved by Owner prior to award of a contract. This schedule shall reflect the dates set forth in the Contract Documents and include all construction activities such as detailing, shop fabrication, intervals from

purchase to delivery of purchased items and field activity durations, and shall be sufficiently detailed to enable Owner, at all times throughout the duration of the Work, to compare actual with scheduled progress. This schedule when approved by Owner shall be the approved schedule.

38.3 Modification. Owner reserves the right to issue a written modification of the sequence of Work set forth in the approved schedule.

38.4 Owner May Provide. In the event Contractor fails to provide the Progress Schedule approved by Owner within the time period stipulated, Owner may establish and prepare the schedule at the expense of Contractor. This schedule, when forwarded to Contractor, shall be the approved schedule.

38.5 Contractor's Failure to Maintain Schedule. If Contractor fails to maintain the Progress Schedule and absent an extension of time from Owner pursuant to Section 39.2, or if the progress or performance of the Work or the procedure employed in the Work is such that, in the opinion of Owner, the Work will not be completed within the time or times stated in the Contract Documents, Contractor shall at its own expense work overtime, additional shifts, Saturdays, Sunday and/or holidays, and/or hire additional employees, and revise or implement its construction procedures as may be necessary to restore adherence to the approved schedule.

Contractor will be responsible for the handling of jurisdictional disputes or Work stoppages which may arise during performance of the Work. Contractor shall promptly utilize available remedies to effect resumption of the Work.

39. DELAYS AND EXTENSIONS OF TIME.

39.1 Claim for Extension. Should Contractor contend that it is entitled to an extension of time for completion of any portion of the Work, Contractor shall:

(a) Within forty-eight (48) hours of the occurrence of a delay, notify Owner in writing setting forth the cause of the delay, a description of the portions of Work affected thereby and all pertinent details; and,

(b) Within one week after cause for the delay has ceased to exist, submit written application to Owner for the specific extension of time requested.

39.2 Owner May Grant. Owner, in its sole and absolute discretion, and with no obligation to do so, may grant an extension of time equivalent to the time lost as a direct result of a delay provided the completion of the Work or the progress of any portion of the Work has actually been delayed as a result of:

(a) Flood, cyclone, hurricane, tornado, earthquake or other similar catastrophe;

(b) Other Acts of God, the public enemy or acts of government;

(c) Fires, epidemics, quarantine restrictions, freight embargoes or other casualty for which Contractor is not responsible; and,

(d) Any acts or omissions of Owner or others engaged by Owner except as provided in Section 39.3.

39.3 No Delay for Weather; Other Delays. No extension of time shall be granted for delays resulting from weather conditions except for the catastrophic weather conditions mentioned in the preceding paragraph. Nor shall Contractor be granted an extension of time for delays resulting from interruptions to or suspensions of the Work to enable other Contractors to perform their Work.

39.4 Condition Precedent. It is a condition precedent to the consideration of a request for an extension of time that the foregoing provisions be strictly adhered to in each instance. If Contractor fails to comply, it shall be deemed to have waived the right to request an extension of time.

39.5 Exclusive Remedy. The only remedy available to Contractor shall be a request for an extension of time. Contractor agrees that, whether or not any delay shall be the basis for a request for an extension of time, it shall have no claim against Owner for:

- (a) An increase in the Contract Sum;
- (b) A payment or allowance of any kind for damage, loss or expense resulting from delays;
- (c) Any damage, loss or expense resulting from interruptions to, or suspensions of, its Work to enable other Contractors to perform their Work.; and,
- (d) Any refusal of a request for an extension of time.

39.6 Subcontractors Bound. By inclusion in its subcontract agreement or other written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor to provisions substantially similar to this Section 39 and to assume toward Contractor all the obligations and responsibilities which Contractor, by this Section 39, assumes toward Owner. Contractor shall promptly forward to Owner a copy of any claim Contractor receives from any Subcontractor (or Sub-subcontractors at any tier) under this provision. Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors, who shall similarly pass along similar obligations and responsibilities of this Section 39 to persons contracting with them, so that Sub-subcontractors at every tier are bound by provisions substantially similar to this Section 39.

40. SUSPENSION OF OPERATIONS.

40.1 Owner May Suspend. Upon receipt of written notice from Owner and within the time stated therein, Contractor shall suspend shipment and delivery of material and stop any part or all of the Work and operations hereunder for the period of time designated by Owner in the notice. Contractor shall immediately confer with Owner relative to:

- (a) Probable duration of the suspension or stoppage;
- (b) Delays and extensions of time resulting therefrom;
- (c) The reduction or elimination of the Contractor's field costs; and,
- (d) Prospective costs and expenses which may result directly from the suspension or stoppage; including but not limited to, the costs to Contractor of complying with Owner's directions relative to the preservation of the Work in progress and the protection of existing facilities or materials and equipment on or in transit to the site.

40.2 Reimbursement. Contractor shall only be entitled to compensation for periods of suspension which exceed 7 calendar days and reimbursement to Contractor shall be limited to its actual net costs and expenses, without any overhead or anticipated profit for incomplete Work for items agreed upon between Owner and Contractor. These costs and expenses shall be subject to audit by Owner.

40.3 No Further Claim. Contractor shall have no further claim against Owner for damage or loss resulting from suspension of operations.

40.4 Resumption of Work. Owner may, by further written notice, require Contractor to promptly resume all or any part of the Work and operations required by the resumption notice.

41. COMPLETION OF THE WORK UPON DEFAULT BY CONTRACTOR.

41.1 Generally. Should Contractor in the opinion of Owner, at any time during the performance of the Work, (a) neglect or refuse to supply a sufficiency of properly skilled workmen or of materials of proper quality, (b) fail in any respect to prosecute the Work with promptness and diligence, (c) fail to perform any terms and conditions of the Contract Documents, (d) fail to perform the Work in conformity with the Drawings and Specifications, or (e) become insolvent, file a voluntary petition of bankruptcy or be subject to an involuntary petition of bankruptcy and fail to provide Owner with adequate assurance of future performance within ten (10) days of delivery of a written request therefor, then Owner may, after giving written notice to Contractor, provide any necessary labor, materials or equipment required to assist Contractor in the completion of the Work and deduct the cost thereof, and any other damage incurred as a result, including attorney's fees, from any monies due or thereafter due Contractor or its surety under the Contract Documents.

42. TERMINATION.

42.1 Termination for Default. In addition to the rights set forth in Section 41.1 and upon the occurrence of an event set forth therein, Owner may terminate the employment of Contractor for the Work and enter upon the premises and take possession of all materials, tools and equipment, and to employ any other person or persons necessary to finish the Work on a fixed sum contract basis, cost plus percentage of cost, cost plus fixed fee basis or a combination thereof. In case of termination of the employment of Contractor, neither Contractor nor its surety shall be entitled to receive any further payment under the Contract Documents until the Work is finished. If the unpaid balance of the amount to be paid under the Contract Documents shall exceed the costs and expenses incurred by Owner in finishing the Work and any costs, damages or losses, including reasonable attorney's fees and costs, arising from the default of Contractor, the excess shall be paid by Owner to Contractor and/or its surety. If the costs and expenses and any costs, damages or losses, including reasonable attorney's fees and costs arising from the default of Contractor shall exceed the unpaid balance of the Contract Documents, Contractor shall pay the difference to Owner.

42.2 Termination for Convenience. In addition to its right to terminate the Contractor for Default, the Owner reserves the right to terminate the Work at any time without cause for the Owner's convenience. In such event Contractor shall be paid to the date of termination for such portions of the Work as Contractor and its Subcontractors have completed and for materials which have been provided, fabricated or delivered, including reasonable expenses arising directly from the termination less any amounts that would otherwise be deducted from any payment as otherwise provided in the Contract Documents. Owner shall not be responsible for, nor liable for, anticipated overhead and profit on that portion of the Work not completed, or lost profits on other jobs which could have been performed by Contractor. This right to terminate shall be in addition to all other rights and remedies granted Owner under the Contract Documents.

43. ACCEPTANCE OF FACILITIES, SYSTEMS AND EQUIPMENT.

43.1 Generally. Compliance with all requirements of the Contract Documents will be required prior to written acceptance of the Work by Owner. Acceptance will be in the form shown in Appendix B and may be submitted by Contractor when in its opinion all requirements of the Contract Documents for the Work have been met.

43.2 Satisfaction of Contract Requirements; Disputes. In cases of dispute as to the fulfillment of the requirements of the Contract Documents, Contractor shall make all tests necessary to establish whether the completed Work fulfills the requirements of the Contract Documents. Contractor, if so directed in writing by Owner, shall engage an approved testing laboratory to perform such tests. Contractor shall provide all labor, material and equipment necessary to perform the tests or assist the testing laboratory.

(a) If, in the opinion of Owner, the test results indicated compliance with the requirements of the Contract Documents, Owner will reimburse Contractor for the costs incurred in the performance of the tests.

(b) If, in the opinion of Owner, the test results indicate noncompliance with the requirements of the Contract Documents, the cost of the testing shall be borne by Contractor and Contractor shall immediately remove, replace, reconstruct or otherwise alter the Work and secure compliance with the requirements of the Contract Documents at no additional cost to Owner.

43.3 Contractor to Furnish. Final acceptance by Owner shall also be subject to Contractor furnishing at least the following:

(a) With Owner's maintenance personnel, Contractor shall direct the checkout of utilities, operations of systems and equipment for readiness and assist Subcontractors and equipment suppliers in their startup and testing procedures in accordance with the Contract Documents and manufacturers' requirements;

(b) Contractor shall be required to provide Owner with three (3) complete sets of written instructions covering the proper operation and maintenance requirements of all equipment furnished under the Specifications. Contractor shall also furnish reproducible transparencies of all drawings; and,

(c) Instructions shall be contained in a hard cover type three or more ringed binder and shall contain uniform sized instruction sheets. Instructions shall essentially consist of the following sections:

- (1) Description of System;
- (2) Installation and Operating Instructions;
- (3) Maintenance Requirements for All Equipment;
- (4) Controls and Adjustments;
- (5) Parts Lists; and,
- (6) System Electrical Wiring Diagrams.

43.4 As-Built Drawings. The Contractor shall keep an accurate record of "As-Built" conditions as the Work progresses. Upon completion of the Work, and prior to final payment by Owner, Contractor shall furnish to Owner marked up drawings showing locations and elevations of all concealed Work and recording any variations from working, engineering or shop drawings.

44. GUARANTEE.

44.1 Contractor Guarantees. For a period of two (2) years following substantial completion of the Work Contractor warrants guarantees to Owner that all labor performed and materials furnished and Work performed by Contractor are in strict compliance with the requirements of the Contract Documents, including all Modifications, and free of defects. Contractor further warrants and guarantees that all equipment and materials made a part of the Work and furnished by Contractor or its Subcontractors will be new (unless otherwise specified), of good quality and free from defects and in strict conformity with the Contract Documents. Work not conforming to these requirements shall be considered defective. Should any defect develop due to improper materials, equipment, workmanship or arrangements, the defects shall, upon written notice during the Corrective Work Term, as hereinafter defined, be corrected and made good by the Contractor without expense to Owner. Any other Work affected in correcting such defect will also be made good by Contractor without expense to Owner. All such guarantee Work performed shall be subject to these General Conditions.

The foregoing guarantee by Contractor is in addition to any guarantees, warranties or other stipulations required from Subcontractors under the various trade sections and shall cover all Work under the Contract

Documents whether or not any portion or trade has been sublet. The Subcontractor Guarantees under Section 44.3 below and the Manufacturer's Warranties under Section 44.4 below are in addition to and not in satisfaction or substantiation of, the Contractor Guarantees.

44.2 Corrective Work Term. For two years unless a different period of time is expressly stated under any trade section of the Specifications, Contractor shall repair, replace or otherwise correct defects in the Work (the Corrective Work Term). Neither the foregoing Corrective Work Term nor any other guarantee period shall begin until that portion of the Work covered by the guarantee has been accepted in writing by Owner. The Corrective Work Term shall only relate to Contractor's obligations to correct defective Work. Nothing herein shall be construed to establish a period of limitations with respect to other obligations that Contractor might have under the Contract Documents, including the obligation to comply with the Contract Documents.

44.3 Subcontractor Guarantees. Contractor shall obtain from Subcontractors written guarantees in the form shown in Appendix A, covering their respective portions of the Work for the period specified, and deliver these to Owner together with its own guarantee. These Subcontractor guarantees must be enforceable directly by Owner.

44.4 Manufacturer's Warranties. Any manufacturer's warranties that apply to portions or components of the Work shall be, and are hereby, assigned to Owner and shall be delivered to Owner upon completion of the Work.

44.5 Assignment by Owner. Owner may, in its discretion, assign any warranties and/or guarantees herein to any party as determined by Owner to be necessary or appropriate.

45. NON-DISCLOSURE AGREEMENT. The Contractor agrees to execute upon request by Owner, a non-disclosure agreement in a form satisfactory to Owner, which agreement shall relate to any confidential or proprietary data or information to be disclosed by Owner to Contractor.

45.1 Notwithstanding the absence of such request, the following terms shall apply to "Confidential Information" defined as follows:

(a) Any information provided to Contractor by Owner, any affiliate or related corporation of Owner or any third party, or discovered or otherwise observed by Contractor, relating to any operations of Owner, or any affiliate or related corporation of Owner, including, without limitation, information relating to products and products in development; and

(b) All documents, records, data compilations, computerized records, statements, interviews, opinions or other information to which Contractor may be provided access by Owner, any affiliate or related entity of Owner or any third party as a result of the Work.

45.2 Confidential Information. The term "Confidential Information" shall not include information that:

(a) Is or becomes available in the public domain through no wrongful act of Contractor;

(b) Is already in Contractor's possession prior to the performance of the Work hereunder without an obligation of confidentiality;

(c) Is independently developed by Contractor;

(d) Is required to be disclosed pursuant to any final and unappealable order of a court or agency of competent jurisdiction served on Contractor, provided that Contractor gives Owner written notice within two days of receipt of such order and at least 30 days prior to the production or disclosure of any such Confidential Information; or

(e) Is required to be filed with any public agency as part of obtaining permits or approvals required for the Work.

45.3 Use of Confidential Information.

(a) Except as otherwise authorized in writing by Owner, all Confidential Information shall be deemed confidential, and without the prior written consent of Owner, Contractor shall not, nor shall Contractor permit any related parties, or any other person under the respective control of Contractor, to (1) communicate, disclose, divulge, reveal or otherwise make known any Confidential Information to any person or entity not a party to a Confidentiality Agreement with Owner in connection with the Work; or (2) use any Confidential Information for any purpose which may adversely affect Owner, or any respective business, operations or other business conducted by any of its affiliates or related companies.

(b) Contractor shall (1) take all reasonable care to keep the Confidential Information confidential, and (2) expressly require each of its officers, staff members, other employees, representatives, agents and contractors exposed to any of the Confidential Information to keep all Confidential Information confidential. Contractor shall limit the use and circulation of the Confidential Information within its organization to the maximum extent possible.

(c) Immediately at Owner's request, Contractor shall return all Confidential Information to Owner.

45.4 Obligations to Continue. The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive the termination of this Agreement.

45.5 Non-Disclosure. Neither party hereto may disclose to any third party the subject matter, or the terms and conditions of this Agreement unless otherwise agreed upon by the parties hereto or unless and to the extent required by applicable federal, state or local laws or regulations. Without limiting the foregoing, without Owner's written consent, Contractor may not refer to the Project or its relationship with Owner in its advertising, nor shall it use the name "Toyota" or any graphic depictions of the Project, including photographs or drawings, in such advertising.

45.6 Injunctive Relief. Contractor acknowledges that the restrictions contained in this Section 45 are necessary to protect the legitimate interests of Owner, its affiliates and related corporations and that any violation thereof would result in irreparable harm and injury to Owner, its affiliates and related corporations. In the event of a breach or threatened breach by Contractor of any provision of this Section 45, Contractor agrees that Owner will be entitled to injunctive relief restraining Contractor from such breach or threatened breach and to any other legal or equitable remedies available to Owner.

46. LABOR HARMONY.

46.1 Generally. It is understood and agreed by Owner and Contractor that the maintenance of labor harmony on the Project Site is of mutual importance to the creation and continuation of the Contract Documents.

46.2 Owner's Right to Terminate. Accordingly, Contractor agrees that in the event that Work on the Project Site is delayed, disrupted or interfered with either by a labor dispute between Contractor and his employees, between his Subcontractors and their employees, or by any union representing employees of Contractor or any of his Subcontractors, Owner shall have the absolute right to terminate the Contract Documents upon forty-eight hours written notice to Contractor and Owner shall have the rights available, upon such termination, as provided in these General Conditions.

47. MISCELLANEOUS PROVISIONS.

47.1 Enforceability. In the event any section or any part or portion of any section of the Contract Documents shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that section, or any other section thereof.

47.2 Binding Effect. The Contract Documents shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

47.3 Amendments. Unless otherwise expressly provided in the Contract Documents, no supplement, Modification, or amendment of the Contract Documents shall be binding unless executed in writing by all parties hereto. Contractor acknowledges that the status, decisions and laws of the state in which Project is located may result in Owner requiring changes, modifications or supplements to these Terms and General Conditions, and Contractor agrees to cooperate with Owner and to enter into amendments hereto required by Owner, with increase in or adjustment to the Contract Sum.

47.4 Notices. All notices, requests, demands and other communications required or permitted to be given or made under the Contract Documents shall be in writing and will be deemed to have been given on the date of delivery personally or of deposit in the United States mail postage prepaid by registered or certified mail, return receipt requested, or of receipt of confirmed facsimile, addressed to the name and address indicated in the Contract.

47.5 Independent Contractor. Nothing in the Contract Documents shall be construed to create an agency relationship between Owner and Contractor, and Contractor shall remain an independent contractor operating independently of Owner's authority, subject only to the general obligations contained in the Contract Documents regarding satisfactory performance of the Project.

47.6 No Prohibited Arrangements. By executing the Contract Documents, Contractor represents and warrants that Contractor has not in any way, directly or indirectly, entered into any arrangement, understanding or agreement with any Contractor, Subcontractor, Materialman, any director, officer, employee or agent thereof (the "Service Providers"), or with any employee or agent of Owner, whereby Contractor or Service Providers has paid or is to pay such other Service Providers or Owner's employee or agent any sum of money, or has given or is to give such employee or agent of Owner anything of value whatever. Contractor further represents and warrants that Contractor has not, directly or indirectly, entered into any arrangement or agreement with any Service Providers, which tends to or does lessen or destroy free competition in the letting of the Contract Documents; that no inducement of any form or character other than that which appears upon the face of the contract shall be suggested, offered, paid or delivered to any person whomever to influence the acceptance and execution of the Contract Documents, nor has Contractor any agreement or understanding of any kind whatsoever with any person whomsoever to pay, deliver to or share with any other person, in any way or manner, except as may be provided in the Contract Documents, any of the proceeds of the Contract Documents.

47.7 Governing Law. The Contract Documents are executed and delivered in, and shall be governed, enforced and interpreted in accordance with the laws of the state where the Project is located, without reference to choice of law.

47.8 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

47.9 Alternative Dispute Resolution. Subject to TEMA's or any NAMC's right to seek injunctive relief pursuant to Section 45.6, in the event of a dispute concerning contractual causes arising from the Contract Documents or the parties' obligations hereunder, TEMA and any applicable Toyota Party and Contractor shall endeavor to settle the dispute through good faith negotiations. Only if the dispute cannot be resolved through good faith negotiations, either party has the right to request non-binding mediation. If mediation fails to resolve the

dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting same. The arbitration proceedings shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, or if the parties so agree, the relevant rules of another arbitration organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in the state and county where the Project is located. The prevailing party shall be entitled to an award of attorney's fees. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§1-16, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. Notwithstanding any applicable rule or statute referenced herein to the contrary, any arbitration pursuant to this section shall not be consolidated or joined with any arbitration proceedings involving persons or entities not a party to this Agreement without the written consent of the Owner. Further, no person or entity may be joined in any arbitration pursuant to this section without the written consent of the Owner.

48. PROVISIONS APPLICABLE TO CERTAIN JURISDICTIONS. It is understood and agreed that the following provisions are incorporated into these General Terms and Conditions and into the Contract Documents to be applicable where the Work is to be performed in the jurisdiction indicated. To the extent the following provisions are in conflict with the remainder of these General Terms and Conditions, the following provisions shall control.

48.1 Alabama. The following additional provisions shall apply when the Work is to be performed in Alabama:

(a) Contractor Compliance with Licensing Requirements. Contractor shall comply with the requirements of Section 34-8-1 et seq., of the Code of Alabama (1975), a copy of which is attached hereto as Appendix E, including, but not limited to the following:

(1) Pursuant to Section 34-8-6(b) of the Code of Alabama (1975), every person, firm, or corporation licensed pursuant to Alabama Code Chapter 34 shall include his or her license number in all construction contracts, subcontracts, bids and proposals; and,

(2) Pursuant to Section 34-8-7(c)(5) of the Code of Alabama (1975), every subcontractor shall be licensed with the Alabama Board of Licensure prior to beginning Work on the Project.

(b) Rejection of Bids for Non-Compliance. Section 34-8-8(b) of the Code of Alabama (1975), requires that all bids that do not contain the current license number of the General Contractor submitting the bid must be rejected by the Owner.

(c) Subcontractor Compliance. Contractor shall maintain and shall cause its Subcontractors to maintain all registrations and licenses required by the authorities having jurisdiction over the Project and shall furnish Owner with evidence of same.

(d) Tax Abatement Requirements. The following are the procedures for qualifying purchases of construction-related material and equipment for sales tax abatements granted to Toyota Motor Manufacturing, Alabama, Inc. ("TMMA") by The Industrial Development Board of the City of Huntsville. It is imperative that these procedures are followed and that all purchases of construction-related materials for the Project are tax exempt:

(1) Each contractor or subcontractor purchasing tangible personal property for the Project must submit to the Alabama Department of Revenue an application for Sales and Use Tax Certificate of Exemption for an Industrial or Research Project. The Department will subsequently issue to the contractor or subcontractor (herein referred to as the "certificate holder") a certificate of exemption (Form STE-2);

(2) A prime contractor applying for a Form STE-2 must submit with its application written confirmation from TMMA that it is authorized to make purchases of tangible personal property to be incorporated into the Project;

(3) A contractor or subcontractor applying for a Form STE-2 must submit with its application written confirmation from TMMA or the prime contractor that it is authorized to make purchases of tangible personal property to be incorporated into the Project;

(4) Upon receipt of Form STE-2, the certificate holder must copy, complete, and provide the certificate to each vendor as documentation for the tax exempt status of the certificate holder's qualifying purchases of tangible personal property. The following information should also be provided by the certificate holder on the certificate copy given to the vendor:

(A) Name and address of the vendor to whom the certificate copy is provided;

(B) Date the certificate is provided, and,

(C) Certificate holder's signature and title.

(5) A certificate holder regularly making tax exempt purchases may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the tangible personal property qualifies for the abatement;

(6) The certificate holder must maintain a list of all vendors to whom a copy of the exemption certificate is furnished. The list must be maintained in the certificate holder's records for purposes of inspection by the Alabama Department of Revenue and should contain the name, address and type of business of each vendor to whom the certificate holder provided a copy of the certificate;

(7) Certificate holders are responsible for reporting and remitting nonabatable sales and use taxes due on all purchases for which they use the certificate to purchase property without the payment of tax to the vendor or supplier;

(8) The certificate holder must notify the Department immediately upon any change in name or mailing address;

(9) The certificate holder must return the certificate to the Department after the Project has been placed in service;

(10) The certificate of exemption may only be used by the person or entity to which it is issued by the Department; and,

(11) All contractors, subcontractors, and suppliers must obtain a certificate of exemption before making purchases for the Project and must use the certificate in accordance with the procedures outlined above in order to insure that all purchases of property qualify for the abatement of taxes.

(e) Contractor Compliance with Alabama Immigration Law Requirements. Contractor shall comply with the requirements of Act No. 2011-535, Sections 31-13-1 through 31-13-30 of the Code of Alabama (1975), as amended, known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as the same may be amended, (the "Alabama Immigration Law"), including, but not limited to the following:

(1) Contractor shall not knowingly employ, hire for employment, or continue to employ, any unauthorized alien;

(2) Contractor shall be enrolled in the federal E-Verify Program and will remain so enrolled and participate in the federal E-Verify Program throughout the performance of its obligations under the Contract Documents;

(3) Contractor shall verify every employee that is required to be verified according to the applicable federal rules and regulations;

(4) Contractor shall assure that every Subcontractor complies with the applicable provisions of the Alabama Immigration Law; and,

(5) Contractor shall maintain records according to all applicable federal and state immigration laws and regulations, including, without limitation, the Alabama Immigration Law.

48.2 Arizona. The following additional provisions shall apply when the Work is to be performed in Arizona:

(a) **Arizona Prompt Payment Act.** In addition to the terms set forth in Section 32 (Payment), the following terms shall apply to all private Arizona construction projects. If the Work is anticipated to take, or actually takes, more than sixty (60) days to complete then the following conditions apply not only to final payments and retention, but also to progress payments as follows:

(1) Contractor shall submit progress payment applications to Owner in accordance with the requirements of the Contract Documents, including without limitation, to the requirements of section 32 herein;

(2) Upon receipt of a progress or final application for payment, in the form and with the supporting documents required by Section 32, Owner shall certify, deny, or partially certify the application in writing within fourteen (14) days;

(3) Owner may deny, or partially deny, any application for payment for any of the following reasons:

(A) Unsatisfactory job progress;

(B) Defective construction Work or materials not remedied;

(C) Disputed Work or materials;

(D) Failure to comply with other material provisions of the construction contract;

(E) Third-Party claims filed or reasonable evidence that a claim will be filed;

(F) Failure of the contractor or a subcontractor to make timely payments for labor, equipment and materials;

(G) Damage to the Owner; or

(H) Reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum.

(4) In the event that Owner determines that any portion of an application for payment should be denied, Owner may withhold a reasonable amount sufficient to protect Owner from direct costs the Owner reasonably expects to incur and from other losses for which Contractor is responsible;

(A) When any Owner stated reason for denying a progress or final payment application has been removed or cured by Contractor, Contractor shall submit a new payment application for that portion of the withheld amount not more than once every thirty days.

(5) Subject to Owner's right to setoff and withhold payments set forth in the Contract Documents, Owner shall make payments on any approved and certified progress or final payment applications within seven (7) days of its written approval and certification; and,

(6) Contractor shall make payment to its subcontractors and material suppliers within seven (7) days of receipt by Contractor of each progress or final payment received for such subcontractor's or supplier's Work. Payment to subcontractors or suppliers is not required in the event that they have not performed in accordance with the subcontract or supplier agreement or if no proper billing or invoice is submitted by the subcontractor or supplier. All payments made to Contractor shall be considered payments made in trust under A.R.S. § 33-1005.

(b) Retention.

(1) Upon substantial completion (as defined by A.R.S. § 32-1129(A)(7)) of the Work, Contractor shall submit a payment application for withheld retention. The payment application shall conform to the requirements of the Contract Documents, including without limitation, to the requirements of section 32.18 herein.

(2) Upon receipt of the payment application for retention, in the form and with the supporting documents required by Section 32, Owner shall certify, deny, or partially certify the application in writing within fourteen (14) days.

(3) Owner may decline to approve an application for payment of retention for failure of Contractor to: (1) complete a material requirement of the construction contract; (2) complete portions of the Work; or (3) for any reason justifying the denial of any other payment application set forth in the Contract Documents, including without limitation, subsection (a)(3) above.

(A) In the event that Owner partially approves an application for payment of retention, Owner may, in its sole discretion, withhold from retention to be released, or final payment, 150% of the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is, or may be, responsible.

(4) Subject to Owner's right to setoff and withhold payments set forth in the Contract Documents, Owner shall make payments on any approved and certified payment application for retention within seven (7) days of its written approval and certification.

(5) Contractor shall make payment to its subcontractors and material suppliers within seven (7) days of receipt by Contractor of retention received for such subcontractor's or supplier's Work.

(6) Contractor may not withhold retention from its subcontractors or suppliers in an amount greater (either as a percentage or in aggregate) than that withheld by Owner.

(c) Compliance with Contractor Licensing Requirements. Contractor shall comply with the requirements of Arizona Revised Statutes, Title 32, Article 2, including, but not limited to the following:

(1) Pursuant to A.R.S. § 32-1124(B), every person, firm, or corporation licensed by the Arizona Registrar of Contractors shall include his or her license number in all construction contracts, subcontracts, bids and proposals;

(2) Pursuant to A.R.S. § 32-1151, it is unlawful for any firm, person, or corporation to act or offer to act as a contractor without being duly licensed;

(3) Contractor certifies and warrants to Owner that it has received, and will maintain in good standing, all required licenses and registrations, including AZ ROC licenses, to perform the Work; and,

(4) Subcontractor Compliance. Contractor shall cause its Subcontractors to maintain, all registrations and licenses required by the authorities having jurisdiction over the Project and shall furnish Owner with evidence of same.

(d) **Indemnification by Contractor.** To the greatest extent permitted by law, in any and all instances under the Contract Documents where Contractor is required to indemnify, defend, or hold harmless Owner and/or other Indemnitees, including without limitation Sections 16 and 17, such obligation by Contractor shall apply regardless of whether or not the claim damage, loss, liability or expense that is the subject of such obligation is caused in part by the negligence or other act or omission, whether active or passive, of Owner or any other party indemnified or held harmless by Contractor. However, Contractor's obligation to indemnify, defend, or hold harmless an Indemnitee shall not arise in cases where the claim damage, loss, liability or expenses results from the sole negligence of that Indemnitee or its agents or employee.

(e) **Notice of Completion.** Pursuant to A.R.S. § 33-993(A) & (F), Owner may file a Notice of Completion within ten (10) days of the issuance of a Certificate of Occupancy for the Project in the Official Records of the county in which the Project is located (the "Notice of Completion").

(f) **Lien Waivers.** Section 32.14 of the General Conditions is hereby modified to require that the forms of waiver of mechanic's lien identified therein shall be substantially consistent with the applicable forms set forth in A.R.S. § 33-1008. Appendix D and any reference thereto in the General Conditions is hereby deleted.

(g) **Stop Payment Notices.** In the event Owner receives a Stop Payment Notice pursuant to A.R.S. § 33-1051 *et seq.*, Contractor shall take any and all necessary steps to secure the release of the Stop Payment Notice within five (5) business days. In the event Contractor fails to do so, Owner may, but is not required to, take whatever action it deems necessary or appropriate to secure the release of the Stop Payment Notice, including but not limited to payment of the amount claimed to be due. Owner shall be entitled to deduct from the Contract Amount any and all costs and expenses incurred in securing the release of the Stop Payment Notice, including but not limited to the amount paid to secure such release and attorney fees and expenses incurred in the process.

(h) **Payment Bond.** In addition to the bonds required in the Contract Documents, including without limitation section 18 herein, upon request, Contractor shall furnish Owner, prior to commencing its Work, a payment bond in lieu of lien rights in the form set forth in A.R.S. § 33-1003.

(i) **Remedies.** Owner hereby reserves any and all remedies and causes of action that it may have whether such remedy or cause of action arises in contract, common law, tort, product liability, statute, or any other cause of action against Contractor, including without limitation, product liability and tort remedies for solely economic harm.

48.3 California. The following additional provisions shall apply when the Work is to be performed in California:

(a) INDEMNIFICATION BY CONTRACTOR. IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENT WHERE CONTRACTOR IS REQUIRED TO INDEMNIFY OR HOLD OWNER AND/OR OTHER INDEMNITEES HARMLESS, INCLUDING WITHOUT LIMITATION SECTION 16 AND 17 HEREOF, SUCH OBLIGATION BY CONTRACTOR SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF OWNER OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY CONTRACTOR.

(a) Equal Opportunity.

(1) Section 5.2(a) of the General Conditions is hereby amended and restated as follows: "Contractor shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex (including

pregnancy), religion, handicap genetic information, disability, age (40 or older), marital status, gender, ancestry, medical condition, sexual orientation, or status as a disabled or Vietnam veteran, and shall cause its subcontractors to have a substantially similar policy.”

(2) The first sentence of Section 5.2(b) of the General Conditions is hereby amended and restated as follows:

It is the policy of Owner to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's race, color, national origin, ancestry, sex (including pregnancy), gender, sexual orientation, marital status, religion, age (40 or older), disability, genetic information, medical condition or status as a disabled or Vietnam veteran.

(b) Environmental Activity and Requirements. Section 5.3 of the General Conditions is hereby modified to add the following laws to the definition of “Environmental Requirements”: “(h) 42 Sections 25023.2, 25115, 25117, 25122.7, 25140, 25249.8(a), 25281, 25316, 25501, 25501.1, 25800 et seq, 39655 or 44321 of the California Health and Safety Code; (i) portions of Chapter 11 of Title 22 of the California Code of Regulations which list or define “Hazardous Waste”, “Extremely Hazardous Waste”, or “Acutely Hazardous Waste”; (j) the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; (k) the Porter-Cologne Water Quality Control Act, Water Code §§ 13300 et seq.; (l) all applicable state and local statutes and regulations (including regulations of applicable air quality management districts) governing air quality and emissions.”

(c) Notice of Completion. Pursuant to Section 8182 of the California Civil Code, Owner may file a Notice of Completion within fifteen (15) days after completion of the Work of improvement in the Official Records of the county in which the Project is located (the “Notice of Completion”).

(d) Retainage. Owner may withhold the retention amount for up to 45 days after:

(1) the date of completion (as defined in Section 8180 of the California Civil Code) of Work; (2) the date of occupancy by Owner accompanied by a cessation of the Work; (3) the cessation of labor for a continuous period of 60 days; (4) the date of recordation of a notice of cessation after cessation of labor for a continuous period of 30 days; or (5) as otherwise defined by California law. Owner may continue to withhold 150% of any disputed amount until the dispute is resolved. Owner and Contractor agree that the retainage shall be subject to all other provisions of Section 8180 et seq. of the California Civil Code.

(e) Lien Waivers. Section 32.14 of the General Conditions is hereby modified to require that the forms of waiver of mechanic’s lien identified therein shall be substantially consistent with the applicable forms set forth in Sections 8132, 8134, 8136 and 8138 of the California Civil Code, and 48.6 attached as Appendix G-1, Appendix G-2, Appendix G-3 and Appendix G-4.

(f) Guarantee. Section 44.2 of the General Conditions is hereby modified to delete the period at the end of the last sentence and insert the following text in lieu thereof: “, nor shall anything herein be construed to affect Owner’s rights under Sections 337.1 and 337.15 of the California Code of Civil Procedure.”

48.4 Canada. The following additional provisions shall apply when the Work is to be performed in Canada:

Ontario

(a) **Retail Sales Tax.** Any Contractor that is a "non-resident contractor" as defined for purposes of the Retail Sales Act (Ontario) shall comply with the requirements of subsection 39(3) of such Act or any successor provision thereto regarding the deposit of sums with, or the provision of a guarantee bond to, the Minister of Finance of Ontario, shall obtain from the Minister a certificate that such requirements have been satisfied, and shall provide a duplicate copy of such certificate to Owner. Unless such duplicate copy has been provided to Owner, Owner shall

deduct from each payment made to Contractor all amounts required by the said Act to be deducted, and shall remit such amounts to the said Minister.

(b) HST Tax. There shall be added to each amount to be paid by Owner to Contractor hereunder all applicable goods and services tax. Contractor shall provide to Owner such documentation as is prescribed by Input Tax Credit Information (HST) Regulations as to the Excise Tax Act (Canada) or any successor provision therefor and as is required in order for Owner to claim an input tax credit in respect of such tax.

(c) Indemnity Payment. If an indemnity payment made by Contractor to Owner is subject to HST or is deemed by the Excise Tax Act (Canada) to be inclusive of HST, or is subject to any other tax, Contractor shall pay to Owner, in addition to the indemnity payment, an amount equal to the HST or other tax payable in connection with the indemnity payment and such additional amount.

(d) Non-Resident Contractor. For Canadian projects, Owner shall deduct or withhold from each payment to Contractor all taxes which Owner is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Contractor a copy of the receipt of payment issued by that authority.

(e) Construction Lien Act (Ontario). The Contractor shall submit with each application for payment, after the first, a Statutory Declaration (on an original form of CCDC 9A-2001 by the Contractor or CCDC 9B-2001 attached as **Appendices C-1 and D-1** hereto (by Contractor's Subcontractors and Materialmen) stating that all payments in connection with the Work as noted in the Statutory Declaration have been made to the end of the period immediately preceding that covered by the current application as well as a Workplace Safety and Insurance Board Clearance Certificate, with each application for progress payment.

(f) Alternative Dispute Resolution. Section 47.9 is amended in its entirety to read as follows: "Subject to TEMA's or any NAMC's right to seek injunctive relief pursuant to Section 45.6, in the event of a dispute concerning contractual causes arising from the Contract Documents or the parties' obligations hereunder, TEMA and any applicable Toyota Party and Contractor shall endeavor to settle the dispute through good faith negotiations. Only if the dispute cannot be resolved through good faith negotiations, either party has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting same. The arbitration proceeding shall be conducted in accordance with the Ontario Arbitration Act, S.O. 1991 c.17 or, if one of the parties is a non-resident, the International Commercial Arbitration Act, R.S.O. 1990, c.I.9. The parties shall be free to mutually agree upon rules to supplement the minimal rules provided in the Ontario Arbitration Act, or, if applicable, the International Commercial Arbitration Act, or supplement such minimal rules with the rules of an arbitration organization of their choosing.

(g) If the Owner gives the notice in writing described herein to have a dispute resolved by arbitration, the Contractor agrees that this paragraph shall be construed as a formal consent to the stay of any lien proceedings until an award is rendered in the arbitration or such dispute is otherwise resolved between the parties. In no event shall the Contractor be deprived of its right to enforce its lien against the Project should the Owner fail to satisfy any arbitral award against it in full on the dispute in respect of which the lien proceedings were commenced. Provided nothing in this paragraph shall prevent the Contractor from taking the steps required by the legislation applicable at the place of the Project to preserve and/or perfect a lien to which it may be entitled and nothing in this Contract shall prevent the Owner from taking such steps as it may consider appropriate in order to remove any registration from title to the place of the Project.

(h) Workplace Safety Legislation. The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the, rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

(i) Prior to the commencement of the Work, the Contractor shall submit to the Owner:

- .1 a current WSIB clearance certificate;
- .2 copies of the Contractor's insurance policies having application to the Project or certificates of insurance, at the option of the Owner;
- .3 a copy of the Notice of Project filed with the Ministry of Labour naming itself as "constructor" under Occupational Health and Safety Act ("OHSA").

(j) The Contractor shall indemnify and save harmless the Owner, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor under OHSA, including the payment of legal fees and disbursements on a substantial indemnity basis. Such indemnity shall apply to the extent to which the Owner is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

British Columbia

(a) ***Contract Sum.*** Section 3.5 is amended in its entirety to read as follows: The Contract Sum (and any part of the Contract Sum) paid or payable by Owner to the Contractor includes all applicable taxes, duties, levies and charges (excluding only GST) payable in respect of the Contract Sum (or any part of the Contract Sum) assessed on any of the Contractor, subcontractors, or their employees or other persons engaged by or through them by any governmental authority in connection with the Work and includes all customs duties with respect to all imported materials

(b) ***Workers Compensation Act.*** The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

(c) Prior to commencing performance of the Work under the Contract, and at any time on Owner's request, the Contractor will deliver to Owner a statement from the Workers' Compensation Board of British Columbia that:

(1) the Contractor is registered and in good standing; and

(2) all Persons who will be performing Work at the Site who are not covered by the *Workers Compensation Act* (British Columbia) are covered under personal optional protection coverage available through the Workers' Compensation Board of British Columbia;

(e) Except as expressly set out otherwise in the Contract Documents, the Contractor will be the "prime contractor" for the purposes of the *Workers' Compensation Act* (British Columbia), and, accordingly, the Contractor will diligently discharge the obligations and duties of prime contractor under that Act. If an entity other than the Contractor is identified as the "prime contractor" in the Contract Documents, then the Contractor will perform the Work in accordance with the safety requirements as required by such entity;

(f) ***Alternative Dispute Resolution.*** Section 47.9 is amended in its entirety to read as follows: "Subject to TEMA's or any NAMC's right to seek injunctive relief pursuant to Section 45.6, in the event of a dispute concerning contractual causes arising from the Contract Documents or the parties' obligations hereunder, TEMA and any applicable Toyota Party and Contractor shall endeavor to settle the dispute through good faith negotiations.

Only if the dispute cannot be resolved through good faith negotiations, either party has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting same. The arbitration proceeding shall be conducted in accordance with the appropriate rules of the BCICAC, and in accordance with the *Arbitration Act* (British Columbia);

48.5 Indiana. The following additional provisions shall apply when the Work is to be performed in Indiana:

(a) **Tax Requirements.** Contractor shall comply with all state and local requirements necessary to ensure any qualifying purchases are exempt from sales and/or property tax under any tax abatement, exemption, phase-in or other tax savings programs granted by state or local governmental entities.

(b) **Liens.** Contractor agrees to indemnify and save Owner harmless from all liability, costs and expenses, including all reasonable attorneys' and experts' fees, to: (1) discharge (by bond or otherwise) or to defend any lawsuit brought to enforce any mechanic's or materialman's lien, rights or claims to a lien, bond claims, personal liability notices pursuant to Indiana Code § 32-28-3-9, or any other claim for payment relating to labor and/or materials covered by the payment and all prior payments; and/or (2) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly attributable to the Contractor or any Work performed by or through the Contractor.

(c) **Governing Law.** The Governing Law provision contained in Provision 47.7 of these General Conditions shall control except the rights and obligations of the parties that relate to and arise from a contract for the improvement of real estate located in the State of Indiana. If the rights and obligations of the parties under these General Conditions relate to and arise from a contract for the improvement of real estate located in the State of Indiana, then: (1) the rights and obligations of the parties shall be governed by the laws of the State of Indiana; and (2) any action or proceeding relating to the rights and obligations of the parties shall be brought in any court with jurisdiction located in the State of Indiana.

(d) **Indemnification by Contractor.** To the greatest extent permitted by law, in any and all instances under the Contract Documents where Contractor is required to indemnify, defend, or hold harmless Owner and/or other Indemnitees, including without limitation Provisions 16 and 17, such obligation by Contractor shall apply regardless of whether or not the claim damage, loss liability or expense that is the subject of such obligation is caused in part by the negligence or other act or omission, whether active or passive, of Owner or any other party indemnified or held harmless by Contractor. However, Contractor's obligation to indemnify, defend, or hold harmless an Indemnitee shall not arise in cases where the claim damage, loss, liability or expenses results from the sole negligence of that Indemnitee or its agents or employee.

48.6 Kentucky. The following additional provision shall apply when the Work is to be performed in Kentucky. When applicable, in the event of a conflict or inconsistency between this Section 48.6 and other provisions of the contract Documents, this Section 48.6 shall control.

(a) **Waiver of Escrow Account for Retainage.** Contractor expressly waives the application of KRS § 371.160 to any retainage withheld by Owner under the Contract Documents.

(b) **Retainage.** Until the Work is fifty percent (50%) complete, Owner can retain up to ten percent (10%) of any undisputed payment in accordance with the terms and conditions set forth in KRS § 371.410. After fifty-one percent (51%) of the Work is completed, the maximum retainage is five percent (5%) of the Contract Sum in accordance with the terms and conditions set forth in KRS § 371.410. Within thirty (30) days after substantial completion of the Project, Owner shall release the retainage amount less an amount equal to two hundred percent (200%) of Owner's reasonably estimated cost of the uncompleted Work under the Contract Documents, in accordance with the terms and conditions of KRS § 371.410.

(c) Delays Within the Control of Owner. Notwithstanding anything to the contrary contained in Section 48.6, Contractor may be permitted to recover certain costs, additional time or damages, for delays performing the Work that are, in whole or part, within the direct control of Owner, pursuant to the terms and conditions set forth in KRS § 371.405(2)(c).

(d) Prompt Payment.

(1) Payments to Contractor. The payments to Contractor by Owner under the Contract Documents shall be made in accordance with the terms and conditions of the General Conditions and as set forth in KRS § 371.405(5) and (6), as applicable.

(2) Payments to Subcontractors. Contractor and any Subcontractor shall comply with the terms and conditions of the General Conditions and as set forth in KRS § 371.405(8), (9) and (10), as applicable, when making payments to their respective Subcontractors, Materialmen and laborers on the Project.

(e) Equal Opportunity. Section 5.2 of the General Conditions is hereby amended and restated as follows: “Contractor shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, or status as a disabled or Vietnam veteran, age (40 or older), or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking.”

(f) Wage and Hour. The following sentence shall be added to Section 32.5 of the General Conditions: “Contractor and all Subcontractors, Materialmen and laborers performing the Work on the premises of Owner, or providing materials or equipment to be used in the performance of the Contract Documents, shall agree to comply with the terms and conditions set forth in KRS § 337.050, and shall be held responsible for compliance and indemnify Owner for any noncompliance.”

(g) Occupational Safety and Health Standards. The following sentence shall be added to the end of Section 5.1 of the General Conditions: “Contractor further agrees that all goods or services provided under the Contract Documents shall be provided in compliance with KRS Chapter 338, including, without limitation, all regulations adopted pursuant thereto in effect at the time of delivery or performance of the Work.”

(h) Indemnity. The first paragraph of Section 17.2 is hereby amended and restated as follows:

“Contractor shall indemnify, hold harmless and defend Owner, and Owner’s employees, agents, consultants, servants and representatives from and against any and all claims, damages, losses, liabilities and expenses, including reasonable attorney’s fees and costs, of whatever nature, to the extent caused by or arising out of any action, omission or operation of the Contractor, or Contractor’s Subcontractors or Materialmen under the Contract Documents, or in connection with the Work attributable in whole or in part to Contractor, any Subcontractor, any Materialman, any of their respective employees, agents, servants and representatives, or any other person. It is the intent of the parties that Contractor shall indemnify Owner and Owner’s employees, agents, servants and representatives to the fullest extent permitted by law. Without in any manner limiting the generality of the foregoing indemnity, the Contractor further agrees as follows:”

Section 17.2 (a) and (b) remain unchanged.

48.7 Mexico. The following additional provisions shall apply when the Work is to be performed in Mexico:

(a) Arbitration. All disputes arising out of or in connection with the Contract Documents shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators

appointed in accordance with the said Rules. The arbitration, including the rendering of the arbitral award, will take place in Mexico City, Mexico and the arbitration shall be conducted in English. The prevailing party shall be entitled to an award of attorney's fees.

(b) *Additional Representations and Warranties of Contractor.* The following are special representations and warranties that are made (i) by any Contractor who is duly organized and in operation pursuant to the laws of Mexico, and (ii) by any other Contractor who is qualified to do business in Mexico and whose performance under any of the Contract Documents will be performed in Mexico. These representations and warranties shall be continuing and shall be updated in writing by Contractor from time to time as needed to remain accurate and in full force and effect, or as requested by TEMA or NAMC.

(1) Contractor is a Mexican company, duly organized and in operation pursuant to the laws of Mexico, as set forth in a duly recorded public instrument which has been duly registered with the appropriate Public Registry of Property and Commerce (the "Public Instrument"). An authenticated copy of the Public Instrument has been furnished to TEMA or the NAMC, as recorded. Contractor has ample powers and authority to enter into these Terms and other Contract Documents, powers that have not been amended, restricted or revoked as of the Execution of the Contract Documents, as set forth in the Public Instrument.

(2) The acceptance by performance (or otherwise) of these General Conditions and all Contract Documents by Contractor is within Contractor's corporate purpose.

(3) Contractor will take all necessary steps to maintain sufficient and owned economic resources and capital to comply with all of its labor obligations with its employees including, but not limited to, fringe benefits and any other applicable legal benefits ("Employee Obligations").

(4) The execution of any Contract Documents contravenes no provision whatsoever that is applicable to any Contractor, and no Contractor requires the consent, the granting of any right or any other legal action whatsoever by any person and/or body (organo) in order for all obligations of any Contractor under the Contract Documents to be legally valid, binding and enforceable in the terms thereof.

(c) Additional Waiver of the Parties.

For the avoidance of doubt and in the event that the legal provisions of Mexico, Federal District be applicable to any Contract Documents for any reason, the parties hereby irrevocably and unconditionally waive any rights set forth in articles 1796 Bis and 1796 Ter of the Civil Code for the Federal District.

48.8 Michigan. The following additional provisions shall apply when the Work is to be performed in Michigan:

(a) Compliance with the Construction Lien Act. Contractor shall comply and cause all of its subcontractors and material suppliers to comply in all respects with the Michigan Construction Lien Act, MCL 570.1101 *et. seq.* (the "Act"). Upon Contractor's failure to comply with the Act, Owner shall have the right to make payments of any claims directly to any subcontractor or materialman. Contractor shall include a provision in each of its subcontracts incorporating this provision and requiring compliance with the Michigan Construction Lien Act, specifically including the following which apply to the subcontractor or materialman:

(1) Contractor shall post a copy of a Notice of Commencement (in the form attached as Appendix F-1) provided by Owner to the Contractor in a conspicuous location upon the job site, maintain blank forms of Notice of Furnishing (in the form attached as Appendix F-2) upon the job site, and provide subcontractors and materialmen with copies of the Notice of Commencement and a Notice of Furnishing upon request as required by the Act.

(2) Contractor shall submit a Contractor's Sworn Statement (in the form attached as Appendix F-3) and in connection with each request for payment.

(3) Each subcontractor shall provide a Subcontractor's Sworn Statement (in the form attached as Appendix F-3) and in connection with each request for payment.

(4) Contractor shall provide a Partial Unconditional Waiver of Construction Lien (in the form attached as Appendix F-4) for Work performed to date in connection with each request for payment, and a Full Unconditional Waiver of Construction Lien (in the form attached as Appendix F-5) in connection with the request for final payment.

(5) Each subcontractor and materialman shall provide a Partial Unconditional Waiver of Lien for Work performed or supplied to date in connection with each request for payment, and a Full Unconditional Waiver of Construction Lien in connection with the request for final payment.

(b) Michigan Builders Trust Fund Act. Contractor shall receive each payment from Owner to be held in trust in accordance with the terms and conditions of the Michigan Building Contract Fund Act, also known as the Michigan Builders Trust Fund Act, MCL 570.151 *et. seq.* (the "Trust Fund Act") and make all disbursements to subcontractors and materialmen as required to comply with the Trust Fund Act. Upon Contractor's failure to comply with the Trust Fund Act, Owner shall have the right to make payments of any claims directly to any subcontractor or materialman.

(c) **Bond.** In the event any construction lien is filed or is attempted to be filed in connection with the Project or Owner's property, Contractor shall, at the option and election of Owner, furnish a bond to remove the construction lien from the Owner's property in accordance with the requirements of MCL 570.1116 within fifteen (15) days of owner's written request. Contractor shall pay all costs and expenses to bond off the construction lien in accordance with such statute.

(d) **Indemnification by Contractor.** In any and all instances under the Contract Documents where the Contractor is required to indemnify, defend or hold the Owner harmless, including, without limitation, Sections 16 and 17 hereof, such obligation by Contractor shall apply regardless of whether or not the claim, damage, loss, liability or expense that is the subject of such obligation is caused in part by the negligence or other act or omission of Owner or any other party indemnified or held harmless by Contractor, but shall not extend to that which is caused by the sole negligence of the party otherwise entitled to indemnity.

(e) **Alternate Dispute Resolution.** Section 47.8 is deleted in its entirety and replaced with the following:

(1) Subject to Owner's right to seek injunctive relief pursuant to Section 45.5, in the event of a dispute concerning contractual clauses arising from the Contract Documents for the Parties' obligations hereunder, Owner and Contractor shall endeavor to settle the dispute through good faith negotiations. Only if the dispute cannot be resolved through good faith negotiations, either party has the right to request non-binding mediation. If mediation fails to resolve the dispute within sixty (60) days after the request for non-binding mediation, the Parties agree to submit the matter in dispute to binding arbitration. Written notice of intent to submit a matter to arbitration shall be given by the Party requesting same. The arbitration proceeding shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, or if the Parties so agree, the relevant rules of another arbitration organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in the offices of the American Arbitration Association in closest proximity to the Project. The arbitration shall be governed by the Michigan Arbitration statute, MCL 600.5001 *et. seq.* and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. If any matter sought by the Owner or Contractor to be arbitrated involves a claim or other matter which requires the joinder of a Third Party to permit a full and complete disposition of the dispute, the Third Party shall be joined in the arbitration. "Third Party" shall mean the Architect-Engineer, any subcontractor or materialman whose contract incorporates the Contract Documents and this arbitration provision or any person or entity who is not a party to the Contract Documents under a theory of indemnification, contribution or otherwise. Limited discovery shall be permitted as determined by the arbitrator based upon the nature of the claim being arbitrated, but shall include eight (8) depositions (the individual length of which shall not exceed eight (8) hours, exclusive of the time used by counsel for making objections or other statements), thirty (30) interrogatories (inclusive of all subparts), thirty (30) requests for admissions (inclusive of all subparts), for production and inspection of documents, and expert witness reports. For purposes of this arbitration provision "Prevailing Party" shall mean the party who obtains an order of enforcement, similar remedy or a judgment or award against the other party or dismissal or similar relief against the other party's claim or, in the event of a counterclaim or crossclaim, a judgment which exceeds any claim, counterclaim, crossclaim, judgment or award of the other party.

(f) **Environmental Requirements.** For purposes of any contract in Michigan, Environmental requirements shall include any applicable state, county or local statutes, laws, ordinances, codes, regulations, rules, directives, policies, standards and guidelines relating to environmental matters, including by way of illustration and not by way of limitation, the State of Michigan Hazardous Waste Management Act, MCL 324.11101 *et. seq.*, the State of Michigan Natural Resources and Environmental Protection Act, MCL 324.101 *et. seq.*, the State of Michigan Water Pollution Control Act, MCL 323.101 *et. seq.*, the State of Michigan Solid Waste Management Act, MCL 324.11501 *et. seq.*, the Michigan Brownfield Redevelopment Financing Act, MCL 125.2651 *et. seq.*, Michigan Asbestos Abatement Contractors Licensing Act, MCL 338.3101 *et. seq.*, and any amendments or

extensions thereof, any replacement laws, statutes and ordinances and any rules, regulations, standards or guidelines issued pursuant to any of the aforesaid and all other applicable environmental standards or requirements.

48.9 Mississippi. The following additional provisions shall apply when the Work is to be performed in Mississippi. The following additional provisions shall apply when the Work is to be performed in Mississippi:

(a) Contractor Compliance with Licensing Requirements. Contractor shall comply with the requirements of *Miss. Code Ann. § 31-3-1, et seq.*, including but not limited to the following:

(1) Pursuant to *Miss. Code Ann. § 31-3-21*, Contractor shall not submit a bid or proposal to Owner without possessing a current certificate of responsibility issued by the Mississippi State Board of Contractors. Moreover, Contractor shall place its current certificate of responsibility number on the outside or exterior of any bid or proposal submitted to Owner.

(2) Pursuant to *Miss. Code Ann. § 31-3-21*, Owner will not open or consider any bid or proposal submitted by Contractor unless such bid or proposal properly states Contractor's current certificate of responsibility number on the outside or exterior of any such bid or proposal.

(3) Pursuant to *Miss. Code Ann. § 31-3-15*, no contract will be issued or awarded to any contractor who does not possess a current certificate of responsibility issued by the Mississippi State Board of Contractors at the time such contractor submits a bid or proposal to Owner.

(b) Rejection of Bids or Proposals for Non-Compliance. Owner will reject any bid or proposal that does not comply with the requirements stated in *Miss. Code Ann. § 31-3-1, et seq.*

(c) Subcontractor Compliance. Contractor shall ensure that all of its Subcontractors secure and maintain all registrations and licenses required by the authorities having jurisdiction over the Project, including but not limited to a current certificate of responsibility issued by the Mississippi State Board of Contractors.

(d) Stop Payment Notices. In the event Owner receives a Stop Payment Notice pursuant to *Miss. Code Ann. § 85-7-181*, Contractor shall take any and all necessary steps to secure the release of the Stop Payment Notice within five (5) business days. In the event Contractor fails to do so, Owner may take whatever action it deems necessary or appropriate to secure the release of the Stop Payment Notice, including but not limited to, payment of the amount claimed to be due. Owner shall be entitled to deduct from the Contract Amount any and all costs and expense incurred in securing the release of the Stop Payment Notice, including but not limited to the amount paid to secure such release and attorney fees and expenses incurred in the process.

(e) Payments to Subcontractors. Contractor shall comply with *Miss. Code Ann. § 87-7-5* in making payments to its subcontractors and suppliers on the Project.

(f) Indemnification by Contractor. In any and all instances under the Contract Documents where Contractor is required to indemnify or hold Owner and/or other indemnitees harmless, including without limitation Section 17 hereof, Contractor shall have no obligation to indemnify or hold harmless any person from that person's own negligence to the extent that *Miss. Code Ann. § 31-5-41* would render such an obligation void and unenforceable.

(g) Tax-Related Procedures. Contractor acknowledges that Owner is the recipient of certain Mississippi tax-related incentives, including, but not limited to, sales and use tax exemptions for costs incurred to establish the project and a rebate of general statewide sales tax based upon the amount of Mississippi Contractor's Tax paid by Contractor on component and noncomponent material as such terms are defined under Mississippi sales tax law. Contractor agrees to cooperate with Owner and comply with any reasonable request of Owner to Contractor to implement such procedures and provide such information as may be required to enable Owner and the Mississippi State Tax Commission (the "Commission") to maximize the available incentives, including, but not limited to, (i) facilitating the direct purchase of component and noncomponent material, (ii) obtaining such permits

as may be required to allow Contractor to be treated as a retailer with respect to certain items of equipment and noncomponent material, (iii) appropriately allocating construction labor costs between costs associated with general construction and costs associated with the construction and installation of manufacturing machinery and equipment, (iv) providing an initial construction budget in sufficient detail for Owner and the Commission to determine the amount of the contract price that will be attributable to component and noncomponent material purchased by Contractor and its subcontractors and to make reasonable estimates of the amount of available rebate and to provide statements for progress billings in sufficient detail for Owner and the Commission to determine the actual amount of contractor's tax paid by Contractor on component and noncomponent material purchased by Contractor and its subcontractors, and (v) participating with Owner in the preparation of a ruling request from the Commission confirming the anticipated tax treatment of the Contract and such agreed upon procedures. Prior to commencement of Work, the Contractor and all subcontractors utilized by Contractor are required to apply for a Material Purchase Certificate (MPC) to be used with all purchases of component material associated with this contract. The MPC number will provide an exemption to the contractor from paying the Mississippi sales and use tax at the time of purchase of component materials. This MPC number must be included on all pay applications from the Contractor. Owner will not reimburse Contractor for any sales or use tax paid by the Contractor where the MPC was not utilized. This MPC number does not affect the Gross Receipts tax. The contractor is subject to the Mississippi Contractor's Gross Receipts Tax on the full value of the contract. The Gross Receipts Tax must have been included in the base bid and the Contractor is required to breakdown the material, labor, overhead, profit, and tax on all payment applications so that Owner can evaluate the materials portion for available incentives.

48.10 Missouri. When the Work is to be performed in Missouri, the "architect or engineer" referenced in Missouri Revised Statute § 436.327 shall be deemed to be the Architect-Engineer (as defined in this Agreement).

48.11 Tennessee. The following additional provisions shall apply when the Work is to be performed in Tennessee:

(a) **Prompt Payment Act.** Payment shall be made to Contractor within 30 days of submission of a conforming application for payment.

(b) **Indemnification by Contractor.** In any and all instances under the Contract Document where Contractor is required to indemnify or hold Owner and/or other indemnitees harmless, including without limitation Sections 16 and 17 hereof, such obligation by Contractor shall apply regardless of whether or not the claim, damage, loss, liability or expense that is the subject of such obligation is caused in part by the negligence or other act or omission of Owner or any other party indemnified or held harmless by Contractor, but shall not extend to that which is caused by the sole negligence of the party otherwise entitled to indemnity.

(c) **Contractor's Payment Bond.** If the Special Conditions require that Contractor furnish a payment bond (or if Owner otherwise requires that Contractor furnish a payment bond), Contractor shall, at the option and election of Owner, furnish such bond in the form contemplated by Section 66-11-142 of the Tennessee Code. In such event, Contractor shall be responsible for complying with and satisfying the provisions of Title 66 and Chapter 11 of the Tennessee Code.

(d) **Contractor's Indemnity Bond.** In the event any mechanic's or materialman's lien is filed or attempted to be filed against the Project or Owner's property, Contractor shall, at the option and election of Owner furnish a bond to indemnify against liens in the form contemplated by Section 66-11-142 of the Tennessee Code. In such event, Contractor shall be responsible for complying with and satisfying the provisions of Title 66 and Chapter 11 of the Tennessee Code.

(e) **Retainage.** In all instances where the Contract Sum is in excess of \$500,000.00, the amount or percentage thereof which is retained in accordance with Section 32.9 herein shall be deposited by Owner in a separate interest bearing escrow account with a third party. Interest on the retainage escrowed funds shall belong to Contractor. Such sums shall be maintained in accordance with the provisions of Section 66-11-144 of the Tennessee Code. Contractor expressly agrees that the retained funds and the accumulated interest shall be held in escrow during the progress of the Work and until the satisfactory completion of the Project, evidenced by a written release

by Contractor and acceptance by the Owner. In no event shall the release of such sums be due prior ten (10) days after the Work is completed by Contractor and accepted by Owner.

(f) Amount of Retainage Line 3 in Section 32.9 is deleted in its entirety and the following sentence insert in its place: Upon application for payment by Contractor according to the agreed upon Contract Sum breakdown, and the Work having been performed in conformity with the Drawings and Specifications and progressing satisfactorily in Owner's judgment, Contractor shall invoice Owner for ninety-five percent (95%) of the value of the labor and materials in place up to the first day of the month, less the aggregate of all previous payments. In addition, the last sentence of section 32.9 is deleted in its entirety.

(g) *Waivers of Lien.* Partial or progress waivers of lien executed by Contractor, Subcontractors, Sub-subcontractors or Materialmen during the performance of the Work on the Project required by the Contract Documents shall not be required to release claims to monies retained under Section 32.9 herein until such retainage is actually paid. The forms of the waivers shall be as required by Owner.

(h) *Notice of Completion.* Upon completion of the Work hereunder Contractor shall deliver to the Owner by registered mail or hand delivery, an affidavit and receipt of payment in the form provided by Section 66-11-205 of the Tennessee Code. Contractor acknowledges that such affidavit and receipt is a condition precedent to final payment under Section 32.19 herein. Contractor shall further assist Owner in preparing and recording a notice of completion pursuant to Section 66-11-143 of the Tennessee Code, and if requested by Owner shall execute and register such notice in the office of the registrar of deeds in the county where the Project is located.

(i) *Final Payment.* Owner shall make final payment within ten (10) days of Contractor's satisfactory completion and Owner's acceptance of the Work and a conforming application for payment has been received by Owner.

(j) *Owner's Right to Apply Monies.* In the event a subcontractor or sub-subcontractor of Contractor notifies Owner of non-payment by Contractor and attempts to assert a claim against the Owner or the Project, Owner shall have the right to withhold from payment to Contractor the amount so claimed, and make payment thereof by joint check or directly to such Subcontractor or Sub-subcontractor.

(k) *Licensing.* By executing this Agreement, Contractor acknowledges that it is currently licensed and in good standing as a general contractor in the State of Tennessee. Contractor agrees to provide annual proof of its continued good standing and licensure. Contractor further agrees to verify before executing any subcontract agreement, that the potential subcontractor is currently licensed in the proper category and classification as required by the laws of the State of Tennessee.

(l) *Acceptance of Work.* A Certificate for Payment, 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 Contract Documents.

(m) *Precedence.* The foregoing provisions of this Section 48.11 shall have priority and take precedence over any other conflicting or inconsistent provision of the Contract Documents.

48.12 Texas. The following additional provisions shall apply when the Work is to be performed in Texas:

(a) INDEMNIFICATION BY CONTRACTOR. THIS CONTRACT AND THESE GENERAL TERMS AND CONDITIONS CONTAIN SPECIFIC PROVISIONS AND OBLIGATIONS OF INDEMNITY, WHICH ARE SET FORTH IN SECTIONS 16 AND 17 HEREOF. IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENT WHERE CONTRACTOR IS REQUIRED TO INDEMNIFY OR HOLD OWNER AND/OR OTHER INDEMNITEES HARMLESS, INCLUDING WITHOUT LIMITATION SECTIONS 16 AND 17 HEREOF, SUCH OBLIGATION BY CONTRACTOR SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE

NEGLIGENCE OR OTHER ACT OR OMISSION OF OWNER OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY CONTRACTOR.

(b) Contractor's Payment Bond. If the Special Conditions require that Contractor furnish a payment bond (or if Owner otherwise requires that Contractor furnish a payment bond), Contractor shall, at the option and election of Owner, furnish such bond in the form contemplated by Subchapter I of Chapter 53 of the Texas Property Code. In such event, Contractor shall be responsible for complying with and satisfying the provisions of Sections 53.202 and 53.203 of the Texas Property Code.

(c) Contractor's Indemnity Bond. In the event any mechanic's or materialman's lien is filed or attempted to be filed against the Project or Owner's property, Contractor shall, at the option and election of Owner furnish a bond to indemnify against liens in the form contemplated by Subchapter H of Chapter 53 of the Texas Property Code. In such event, Contractor shall be responsible for complying with and satisfying the provisions of Sections 53.172, 53.173 and 53.174 of the Texas Property Code.

(d) Retainage. Sums otherwise payable to Contractor in connection with the Project shall be subject to ten percent (10%) retainage pursuant to Section 53.101 of the Texas Property Code. Such sums shall be retained by Owner during the progress of the Work and for thirty (30) days after the Work is completed. The foregoing retainage shall be withheld under each application for payment, against both the original Contract Sum and against change order amounts increasing the Contract Sum.

(e) Waivers of Lien. Partial or progress waivers of lien executed by Contractor, Subcontractors, Sub-subcontractors or Materialmen during the performance of the Work on the Project required by the Contract Documents shall not be required to release claims to statutory retainage under Section 53.101 of the Texas Property Code until such retainage is actually due and paid or payable. The forms of the waivers shall be as required by Owner. Contractor shall, as condition of final payment, provide Owner with a Conditional Waiver and Release on Final Payment in the form set forth in Texas Property Code §53.284(d). Contractor shall, upon receipt of the final payment in good funds paid, provide Owner with an Unconditional Waiver and Release On Final Payment in the form set forth in Texas Property Code §53.284(e).

(f) Affidavit of Commencement/Affidavit of Completion. Contractor shall, at the option and election of Owner, assist (and to the extent required, join) Owner in preparing and filing an Affidavit of Commencement under Section 53.124 of the Texas Property Code and/or an Affidavit of Completion under Section 53.106 of the Texas Property Code.

(g) Owner's Right to Apply Monies. In the event a Subcontractor, Sub-subcontractor or Materialman of Contractor notifies Owner of non-payment by Contractor and attempts to assert a claim against the Owner or the Project, Owner shall have the right to withhold from payment to Contractor the amount so claimed, and make payment thereof by joint check or directly to such Subcontractor, Sub-subcontractor or Materialman if the claim is not disputed by Contractor as required by Section 53.083 of the Texas Property Code.

(h) Acceleration. Owner shall have the right to direct that Work be accelerated by means of overtime, additional crews, additional shifts or resequencing notwithstanding that the Work is progressing without delay in accordance with the established schedule. Contractor agrees to perform in such manner on the basis of the reimbursement of direct cost (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of cost requested in advance by Contractor and approved by Owner, which approval will not be unreasonably withheld) plus a fee in an amount and at a rate otherwise applicable to changes in the Work under the Contract Documents. Contractor expressly waives any other compensation therefor unless otherwise agreed to by Owner in writing in advance of performing the accelerated Work. In the event of any acceleration requested pursuant to this Section, Contractor shall provide promptly a plan setting forth its recommendations for the most effective and economical means of accomplishing such acceleration, which shall be subject to the review and approval of Owner.

(i) Sales Tax.

(1) Notwithstanding Section 6 above, this contract is intended to be treated as a “separated contract” for Texas sales and use tax purposes pursuant to Title 34, Section 3.291(a)(13) of the Texas Administrative Code (a “separated contract”). Pursuant thereto, the Contract Sum shall be divided into a separately stated agreed contract price for incorporated materials and a separately stated agreed contract price for skill and labor. Incorporated materials are tangible personal property that becomes a part of the real property plus any additional charges directly attributable to the incorporated materials. Each contract entered into by Contractor with a subcontractor that provides skill and labor in addition to materials will be structured as a separated contract. Under a separated contract, the incorporated materials are treated as sold by the subcontractors to the Contractor and by the Contractor to the Owner.

(2) The Contractor and each subcontractor will acquire its materials to be incorporated into the real property by preparing and issuing its own Texas Resale Certificate and delivering that certificate to its suppliers. The Contractor will also prepare and issue its Texas Resale Certificate to each subcontractor. The Contractor and each subcontractor shall be treated as buying and not reselling, and the Contract Sum includes sales and use tax on, those unincorporated materials, supplies, tools and equipment consumed or used by Contractor or its subcontractors to perform the Work, and includes sales and use tax on rental charges for construction equipment used by the Contractor and its Subcontractors. If Contractor pays sales or use taxes in violation of this Section (i), then Owner shall not be obligated to reimburse Contractor for such tax.

(3) Owner will obtain a direct payment permit for the payment of any sales or use tax in the State of Texas and will issue a “Texas Direct Payment Sales Tax Permit” to Contractor and Contractor will not collect any state or local sales or use tax in the State of Texas from Owner. Contractor will provide Owner with sufficient information and backup material to enable Owner to properly determine its sales and use tax liability. In the event that Owner decides to appeal any assessment, then Contractor will cooperate with and allow Owner to appeal such assessment and will provide Owner with such documents or materials as may be required in relation thereof and, if necessary, to allow Owner to appeal the assessment in the name of Contractor. All costs of such appeal shall be borne by Owner.

(4) Each application for payment shall state separate amounts for incorporated materials and skill and labor. The materials amount shown on each application shall not include any mark up. Allowed overhead and profit shall be included in the overhead and profit column of the application for payment. Each of such applications for payments is hereby incorporated into this Contract by reference.

(5) Change orders including incorporated materials will be separated for Texas Sales and Use Tax Purposes, in accordance with Section (1).

(j) Payments. Payments required under the contract documents shall be made to Contractor within 30 days of submission of a conforming application for payment, as required under the Prompt Payment Act.

(k) Precedence. The foregoing provisions of this Section 48.7 shall have priority and take precedence over any other conflicting or inconsistent provision of the Contract Documents.

48.13 West Virginia. The following additional provisions shall apply when the Work is to be performed in West Virginia:

(a) Payment Bond for Wages. Contractor shall at all times post and maintain any payment bond for wages required by the West Virginia Payment and Collection Act (W.Va. Code § 21-5-1, et seq.) and shall furnish Owner with evidence of same upon request.

(b) *Withholding from Final Payment.* Notwithstanding anything herein to the contrary, Owner shall, if required by W.Va. Code § 11-10-11(b)(1) and (2), withhold six (6) percent of the Contract Sum from the Contractor at the time of final payment until receipt of a tax certificate as required by law.

(c) *Workers' Compensation Insurance Coverage.*

(d) *Workers' Compensation Premiums.* Contractor shall furnish.

(e) *Contractor's License.* The Contract Documents shall include, as required by law, the Contractor's West Virginia Contractor's License Number. Contractor shall further cause all subcontracts to contain the Subcontractor's West Virginia Contractor's License Number.

(f) *Indemnification.* Should Owner be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the West Virginia Wage Payment and Collection Act, and the West Virginia Minimum Wage and Maximum Hour Statute in the performance of the Contract Documents, Contractor, Subcontractor or Materialman violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall defend and hold harmless Owner in any such action or proceeding and pay and defray any damage, expense and cost of any description by reasons thereof, including reasonable attorney's fees and costs.

(g) *Workers' Compensation Premiums.* Contractor shall furnish Owner with evidence of proper classification of its employees for workers' compensation premium payment purposes and shall furnish Owner with evidence of payment of all workers' compensation premiums upon Owner's request. Contractor agrees to indemnify and hold harmless Owner for any claims for unpaid workers' compensation premiums arising from Contractor's failure to properly pay such premiums or arising from Contractor's failure to properly classify its employees for workers' compensation premium payment purposes.

(h) *Mandolidis Coverage.* In addition to other insurance, Contractor is required to purchase and maintain under the Contract Documents, Contractor shall purchase and maintain such additional insurance as will protect it from claims brought against it under W.Va. Code § 23-4-2 and the decision of the West Virginia Supreme Court in *Mandolidis v. Elkin Industries, Inc.*

(i) *Owner Purchased Items.*

(1) *TEMA as Agent.* It is the intent of the parties that certain equipment and materials included in the Work and to be installed by Contractor be purchased by TEMA as agent for Toyota Motor Manufacturing, West Virginia, Inc. ("TMMWV") ("Owner Purchased Items"). In order to make such purchases exempt from West Virginia Consumer Sales and Service Tax and Use Tax in accordance with West Virginia law and Technical Assistance Advisory 97-002 issued by the West Virginia Department of Tax and Revenue (see Advisory), Contractor and Owner agree to the terms set forth below in Sections 48.10(h)(2) and (3). The term "Owner" as used in the Contract Documents shall mean TEMA as agent for TMMWV.

(2) *Procedure for Owner Purchased Items.*

(A) The Contract Documents shall identify Owner Purchased Items.

(B) All Owner Purchased Items shall be ordered by TEMA, as agent for TMMWV, using purchase order forms provided by TEMA. Unless otherwise instructed by TEMA, Contractor shall provide the following assistance as to Owner Purchased Items:

(i) complete purchase order forms for signature by TEMA in its capacity as agent;

(ii) select Owner Purchased Items of a type that fully conform to the requirements of the Contract Documents;

(iii) determine quantities of Owner Purchased Items sufficient to complete the Work called for in the Contract Documents; and

(iv) certify in writing to the Owner that the quantity, description and/or specification of Owner Purchased Items set forth in the purchase order conforms to the requirements of the Contract Documents.

(C) Vendors shall invoice TEMA, as agent for TMMWV, for all Owner Purchased Items. TEMA shall pay for Owner Purchased Items which Contractor advises TEMA to accept.

(D) Contractor shall coordinate and sequence deliveries of all Owner Purchased Items to ensure that Contractor will meet the contract progress schedule and time for completion required by the Contract Documents. Contractor shall be responsible to Owner for delays and resulting expenses or damages caused by untimely deliveries of Owner Purchased Items. Contractor waives and releases any claim against TEMA and TMMWV for the:

(i) untimely delivery of Owner Purchased Items;

(ii) defects in Owner Purchased Items;

(iii) the failure of Owner Purchased Items to conform to the requirements of the Contract Documents.

(E) Owner's representatives or employees will accept delivery of Owner Purchased Items.

(F) Contractor shall have a qualified representative present at the time Owner Purchased Items are delivered to the job site who shall carefully inspect the items and advise the Owner whether to accept such items.

(G) Contractor shall complete receiving reports in a form prescribed by TEMA, as agent for TMMWV, describing the quantity and condition of Owner Purchased Items. The Contractor shall be responsible for subsequent damage or loss until installation is completed and accepted by the Owner. Should the Contractor fail to report any visible signs of damage, then all parties in interest may assume that the damage occurred while the materials and equipment were in the care, custody and control of the Contractor.

(H) Following acceptance of delivery by Owner, Owner Purchased Items delivered to the job site will be unloaded, transferred, stored and fully protected by the Contractor until installed. Any demurrage or similar charge incurred due to failure of the Contractor to promptly unload the Owner Purchased Items shall be the responsibility of the Contractor.

(I) Any Owner Purchased Items furnished at an off-site location, on other than a charge basis in connection with the Contract, shall be deemed as held by the Contractor on consignment.

(J) The Work shall include Owner Purchased Items.

(3) *Enforcement of Warranties and Guarantees for Owner Purchased Items.*

(A) Contractor recognizes that in order to come within the parameters of the Advisory, TEMA will warrant and guarantee the Work, including Owner Purchased Items, to TMMWV. TEMA's warranties and guarantees will be of the same type and extent as those required of the Contractor under the Contract

Documents. It is the intent of the parties through the provisions of this Section 48.10(h)(3) to provide full warranty and guarantee protection as to the Contractor's Work, including Owner Purchased Items. Nothing in this arrangement shall diminish Contractor's warranty and guarantee obligations or contractor's liability for breach thereof. In order to simplify the procedures, proceedings or actions concerning the Contractor's warranties and guarantees, and for the consideration set forth in the Contract Documents, the Contractor agrees as follows:

(i) All warranties and guarantees, including those related to Owner Purchased Items, required by the Contract Documents shall run to TEMA, in its own right as warrantee, and the term "Owner" when used in connection with such warranties and guarantees shall mean TEMA, in its own right as warrantee.

(ii) All warranties and guarantees required by the Contract Documents, except those relating to Owner Purchased Items, shall also run in favor of TMMWV, through its agent TEMA, and the term "Owner" when used in connection with such warranties and guarantees in the Contract Documents shall also mean TMMWV, through its agent TEMA.

(B) In the event of a failure to perform or breach of a warranty or guarantee by the Contractor, Contractor agrees that TEMA will incur costs, damages, and liability as warrantor and guarantor to TMMWV. Accordingly, Contractor agrees that all warranties and guarantees required by the Contract Documents, including those related to Owner Purchased Items, shall be enforceable by TEMA, in its own right as warrantee and Contractor further agrees that TEMA may seek enforcement of the warranties and guarantees and damages for the breach thereof through procedures, proceedings or civil actions, including those authorized by applicable sections of these Terms. In such event, Contractor agrees that:

(i) It will not name or attempt to join TMMWV as a party in any such procedure, proceeding or action;

(ii) the costs and damages recoverable by TEMA in any such procedure, proceeding or action will include:

1. all reasonable costs incurred or to be incurred in complying with such warranty or guarantee, whether incurred or to be incurred by TEMA or TMMWV;

2. all damages incurred or to be incurred by TEMA or TMMWV as a proximate result of the failure to perform or breach of such warranty or guarantee;

3. such other amounts, including interest, as may be recoverable by TEMA or TMMWV under the Contract Documents or applicable law.

(iii) it will assert no defense or other matter of avoidance on the issues of liability, damages or otherwise based on the fact that TMMWV is not a party to the procedure, proceeding or action, or that TEMA is not the owner of the facility.

(C) Contractor agrees that, with the exception of warranties and guarantees for Owner Purchased Items, TMMWV, as principal, shall also have the right, but not the obligation, to enforce and claim damages for breach of the warranties and guarantees required by the Contract Documents through procedures, proceedings or civil actions, including those authorized by applicable sections of these Terms. In such event, Contractor agrees that:

(i) it will not name or attempt to join TEMA as a party in any such procedure, proceeding or action brought by TMMWV;

(ii) the costs and damages recoverable by TMMWV in any such procedure, proceeding or action will include:

1. all reasonable costs incurred or to be incurred in complying with such warranty or guarantee, whether incurred or to be incurred by TEMA or TMMWV;

2. all damages incurred or to be incurred by TEMA or TMMWV as a proximate result of the failure to perform or breach of such warranty or guarantee;

3. such other amounts, including interest, as may be recoverable by TEMA or TMMWV under the Contract Documents or applicable law.

(iii) it will assert no defense or other matter of avoidance on the issues of liability, damages or otherwise based on the fact that TEMA acted as a warrantor to TMMWV and/or is not a party to the procedure, proceeding or action

(D) TEMA, as agent for TMMWV, will, to the extent necessary for Contractor to comply with Contractor's warranty and guarantee obligations with respect to Owner Purchased Items, assign to Contractor vendor warranties and/or guarantees, if any, for Owner Purchased Items. Limitations in vendor warranties or guarantees shall not limit Contractor's warranty and guarantee obligations with respect to Owner Purchased Items.

**APPENDIX A
SUBCONTRACTOR'S GUARANTEE**

Date: _____

To All Whom It May Concern:

_____ of the City of _____, County of _____ and State of _____, being duly sworn, deposes and says that he or she is _____ of _____ (hereinafter called Subcontractor); and, being duly authorized, makes this statement and guarantee on its behalf; that the Subcontractor, in completing the performance of a certain contract agreement with _____ (hereinafter called Contractor) for Work (includes Owner Purchased Items) required by the Drawings and Specifications (Job No. _____), furnished labor or materials or both, supervision of construction or alterations and/or the erection and construction of a certain building or buildings, structures and installations for _____ (hereinafter called Owner), situated on the following property, vis: _____, in the City of _____, County/Province of _____ and State/Country of _____; that, for valuable consideration paid to Contractor therefor, receipt whereof is hereby confessed and acknowledged, the Subcontractor does hereby guarantee to Owner and to Contractor that all labor and materials or both and/or Work performed, is in accordance with the requirements of said Drawings and Specifications and all authorized alterations and additions thereto; that should any defect develop during the guarantee periods for certain trades or Work, as stated herein, due to improper materials, workmanship or arrangements; the same will, upon written notice from Owner or Contractor, promptly be made good by the undersigned without expense to Owner or Contractor, and that any other Work affected in correcting such defect will also be made good by the undersigned without expense to Owner or Contractor.

TRADE OR WORK

GUARANTEE PERIOD

FROM

TO

IN PRESENCE OF

Witness: _____
(Signature)

(Name-Print or Type)

CONTRACTOR

By: _____
(Signature)

Name: _____
(Print or Type)

**APPENDIX B
FACILITIES, SYSTEMS AND EQUIPMENT ACCEPTANCE**

	Date: _____
	Project Name: _____
	Job No.: _____
	Specification Section No.: _____

The requirements of the Drawings and Specification for the above mentioned Project have been completed by _____ (Name of Contractor) to the satisfaction of Owner with the exception of the items written below. This Acceptance shall not be construed as a waiver by Owner of the right to insist upon strict compliance with the requirements of the Drawings and Specifications in the event of subsequently discovered items of non-compliance.

EXCEPTIONS:

_____ THE ENTIRE WORK (RESUBMIT)

_____ THE ITEMS WRITTEN BELOW (RESUBMIT)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

_____ NO EXCEPTIONS

Signed: _____
(Owner's Plant Engineer)

Date: _____

**APPENDIX C
CONTRACTOR SWORN STATEMENT**

(Type or print and submit in triplicate)

Date: _____
County of _____ State of _____

_____ (Name of Person Signing) being duly sworn, deposes and says that being duly authorized, makes this statement on behalf of the _____ (Name of General Contractor or Contractor) General Contractor or Contractor named in the Contract date _____ entered into with the Toyota Motor Engineering & Manufacturing North America, Inc., for the construction of _____ (Project Name on Specification) and/or Work to be performed on the premises situated in _____, _____ County, _____, described as follows: (Job No., Description and Street Address); that the following is a statement showing the names of Contractors, Subcontractors and Materialmen of all subcontracts and material supplier commitments entered into for the furnishing of labor and/or materials to the date of this statement in connection with the Contract, the amounts paid to them, and the amounts due or to become due to them set forth fully and correctly opposite their names, respectively, in said statement, to wit:

COMMITMENTS

Names Subcontractors or Material Suppliers	Present Amount of Contract Including Changes	Amount Previously Paid	Amount to be Paid This Request	Unpaid Balance of Contract Not Completed	Retainer Amount

Deponent further states that the amount of payment requested will be applied to satisfy the General Contractor's or Contractor's specified obligations to Subcontractors and Materialmen if such obligations have not been satisfied previously.

(If the fact is that all of the deponent's laborers have been paid in full, then the following statement should be inserted): "Deponent further states that all his laborers have been paid in full".

or

(If all laborers have not been paid in full, then each unpaid laborer's name and the amount due or to be due should be stated.)

By: _____
(Signature) (Print or Type Name and Title)

CERTIFICATION BY NOTARY PUBLIC

County of _____ State of _____

Subscribed and sworn to before me, this _____ day of _____

by: _____

Notary Public Commission Expires: _____

Notary Name: _____ Signature: _____

Appendix C-1 SCHEDULE C-1

CANADA

PROVINCE OF ONTARIO

STATUTORY DECLARATION

IN THE MATTER OF A SUBCONTRACT

BETWEEN: Toyota Motor Engineering & Manufacturing North Am AND: [Click here to enter Contractor's Legal Name.]
Inc. ("Toyota")
25 Atlantic Avenue [Click here to enter Contractor's Address.]
Erlanger KY 41019 [Click here to enter City, Province, Postal Code.]
(hereinafter referred to as the "Contractor")

said subcontract being dated [date], bearing number [number] and being hereinafter referred to as the "Contract";

TO WIT:

I, _____, of the City of _____,
(Full Name) (Office Location)

in the Province of Ontario, **DO HEREBY SOLEMNLY DECLARE:**

- i) THAT I am _____ of the Contractor.
(Title)
- ii) THAT I have personal knowledge of the facts herein declared;
- iii) THAT all work done or materials whatsoever furnished or used for or in connection with the said Contract have been duly and fully paid, including, without limiting the generality of the foregoing, all accounts for labour, subcontractors, supervision, materials and equipment supplied;
- iv) THAT all wages and benefit payments due to any of the Contractor's personnel, and taxes, contributions, premiums, allowances and remittances due to any authority, pension fund, benefit plan or union fund in accordance with a collective agreement or applicable laws, including the applicable legislation regarding workers' compensation, and all regulations and orders made under such applicable laws, as same may be amended (including, without being limited to, all assessments and deductions under the *Employment Insurance Act* (S.C 1996, c. 23) and the *Income Tax Act* (R.S.C 1985, c. 1 (5th Supp.)), as well as all other charges of whatsoever nature due or payable by reason of the performance of work or services or delivery of materials contemplated by the said Contract, have been duly and timely paid or deducted on or before the date hereof and according to law;
- v) THAT all change or variation orders entitling the Contractor to additional compensation in respect of work or services performed or materials delivered up to the date hereof have been duly notified in writing to Toyota;
- vi) THAT no claims exist arising out of or in connection with the Contract, including claims by Contractor against Toyota, except for those claims which have already been notified in writing to Toyota. in a timely manner and which are fully described and listed in an appendix to this declaration, including a statement of the value of each such claim.

AND I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act* (R.S.C 1985, c. C-5).

DECLARED before me

at the City of _____

in the Province of Ontario this _____ day

of _____,

(Signature)

A Commissioner, etc., in and for the Province of Ontario

(seal)

(Signature)

(Name in Block Letters)

APPENDIX D

WAIVER OF LIEN SAMPLE

The undersigned, in order to induce Owner to release payment to the General Contractor for labor and material performed or supplied through (Date of Current Payment) and knowing of Owner's intention to rely upon the statements herein, states as follows:

1. The undersigned has submitted to Owner, either directly or, if a subcontractor, through the General Contractor, payment requests for all labor and materials performed or supplied on this job through (Date of Current Payment Request).
2. The undersigned has previously received payment in full for all labor and materials performed or supplied on this job through (Date through which previous payment made) and the undersigned does hereby acknowledge such payment and waives, releases and surrenders any and all lien or claims or right of lien as of and through the date set forth immediately above.
3. (For General Contractor Only) Attached hereto as Exhibit "A" and incorporated herein by reference is a full and complete list of all laborers and suppliers of materials having performed Work on this job through (Date of Current Payment Request) all of whom have been paid in full by the undersigned through (Date Through Which Previous Payment Made).

The Job is described as follows:

Name of General Contractor, Contractor	_____
Subcontractor, Laborer or	_____
Materialman	_____

Appendix D-1 SCHEDULE C-2

CANADA

PROVINCE OF ONTARIO

STATUTORY DECLARATION

IN THE MATTER OF A SUBCONTRACT

BETWEEN: Toyota Motor Engineering & Manufacturing North Am AND: [Click here to enter Subcontractor's Legal Name.]
 Inc. ("Toyota")
 25 Atlantic Avenue [Click here to enter Subcontractor's Address.]
 Erlanger KY 41019 [Click here to enter City, Province, Postal Code.]
 (hereinafter referred to as the "Subcontractor")

said subcontract being dated [date], bearing number [number] and being hereinafter referred to as the "Subcontract";

TO WIT:

I, _____, of the City of _____,
 (Full Name) (Office Location)

in the Province of Ontario, **DO HEREBY SOLEMNLY DECLARE:**

- i) THAT I am _____ of the Subcontractor.
 (Title)
- ii) THAT I have personal knowledge of the facts herein declared;
- iii) THAT all work done or materials whatsoever furnished or used for or in connection with the said Subcontract have been duly and fully paid, including, without limiting the generality of the foregoing, all accounts for labour, subcontractors, supervision, materials and equipment supplied;
- iv) THAT all wages and benefit payments due to any of the Subcontractor's personnel, and taxes, contributions, premiums, allowances and remittances due to any authority, pension fund, benefit plan or union fund in accordance with a collective agreement or applicable laws, including the applicable legislation regarding workers' compensation, and all regulations and orders made under such applicable laws, as same may be amended (including, without being limited to, all assessments and deductions under the *Employment Insurance Act* (S.C 1996, c. 23) and the *Income Tax Act* (R.S.C 1985, c. 1 (5th Supp.)), as well as all other charges of whatsoever nature due or payable by reason of the performance of work or services or delivery of materials contemplated by the said Subcontract, have been duly and timely paid or deducted on or before the date hereof and according to law;
- v) THAT all change or variation orders entitling the Subcontractor to additional compensation in respect of work or services performed or materials delivered up to the date hereof have been duly notified in writing to Toyota;
- vi) THAT no claims exist arising out of or in connection with the Subcontract, including claims by Subcontractor against Toyota, except for those claims which have already been notified in writing to Toyota in a timely manner and which are fully described and listed in an appendix to this declaration, including a statement of the value of each such claim.

AND I make this solemn declaration conscientiously, believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act* (R.S.C 1985, c. C-5).

DECLARED before me

at the City of _____

in the Province of Ontario this _____ day

of _____,

 (Signature)

A Commissioner, etc., in and for the Province of Ontario

(seal)

 (Signature)

 (Name in Block Letters)

APPENDIX E
SECTION 34-8-1, ET SEQ., OF THE CODE OF ALABAMA

ALABAMA CODE

Definitions.

(a) For the purpose of this chapter, a "general contractor" is defined to be one who, for a fixed price, commission, fee, or wage undertakes to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site Work, grading, paving or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000) or more, shall be deemed and held to have engaged in the business of general contracting in the State of Alabama.

(b) For the purpose of this chapter, a "general contractor" is defined to include one who, for a fixed price, commission, fee, or wage exceeding five thousand dollars (\$5,000), undertakes to construct, superintend the construction of, repair, or renovate, any swimming pool, and anyone who shall engage in the construction, superintending of the construction, repair, or renovation of any swimming pool in the State of Alabama, where the cost of the undertaking exceeds five thousand dollars (\$5,000), shall be deemed and held to have engaged in the business of general contracting in the State of Alabama and shall be subject to this chapter.

(c) For the purpose of this chapter a "subcontractor" is defined to be one who constructs, superintends, or engages in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site Work, grading, paving, or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000) or more under contract to general contractor as defined in subsection (a) or another subcontractor.

Section 34-8-2

Licensure and classification of contractors.

(a) Any person desiring to be licensed or desiring a renewal of an existing license as a general contractor in this state shall be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, and shall make and file with the board, not less than 30 days prior to any regular meeting thereof, a written application on a form as prescribed for examination by the board and the application shall be accompanied by three hundred dollars (\$300) for a new application or two hundred dollars (\$200) in case of a renewal. If a licensee fails to renew his or her license within 90 days following expiration of the previous license, a late penalty of fifty dollars (\$50) shall be collected, upon renewal, in addition to the renewal fee. The applicant shall apply for a license covering the type or types of contracts on which he or she wishes to perform, and shall provide proof of liability insurance. The board shall classify contractors according to the type or types of contracts on which they may perform, within maximum bid limits, on the following basis: The applicant's request, his or her last annual financial statement prepared by a certified public accountant (C.P.A.) or by any independent licensed public accountant approved by the Licensing Board for General Contractors, his or her previous experience, equipment, and the facts in each case. An applicant shall not be so classified as to permit him or her to bid on or to perform a type of work not included in his or her request for a license. If the application is satisfactory to the board, then the applicant may be required to take an examination to determine his or her qualifications. If the result of the examination of the applicant is satisfactory to the board, the board shall then issue to the applicant a certificate to engage in general contracting in the State of Alabama, stipulating in each license issued the type or types of Work the contractor is permitted to bid on or to perform under his or her license and also setting out a letter symbol indicating the maximum limits on which he or she is permitted to bid or to perform in a single contract. The maximum bid limits shall be set by the formula of not more than 10 times either the net worth or working capital, whichever is the lesser amount, as shown by the applicant's latest financial statement and designated in the classification set out herein that is the closest to this

amount. Should the financial statement of the applicant fail to substantiate the limits requested, further consideration may be given to either of the following: (1) the present market value in lieu of book value of listed assets when properly supported with substantiating evidence, including a combined statement of the applicant that includes other wholly owned or substantially owned interests, or (2) the applicant may furnish a bond acceptable to the board equal in the amount of the applicant's negative working capital or net worth plus the amount of such net worth and working capital to satisfy the requested bid limit. When an applicant's statement qualifies for an amount in excess of classification "E", the limits shall then be set as classification Unlimited or "U". The following letter symbols indicate the maximum amount bid limits allowed a licensee on any one single contract undertaking:

- A - Not to exceed \$100,000.00
- B - Not to exceed 250,000.00
- C - Not to exceed 500,000.00
- D - Not to exceed 1,000,000.00
- E - Not to exceed 3,000,000.00
- U - Unlimited

(b) Any person failing to pass the examination may be reexamined at any regular or called meeting of the board. The certificate of authority to engage in the business of general contracting in the State of Alabama shall expire 12 months following its issuance or renewal and shall become invalid on that date unless renewed. The board may provide for a transitional period following May 19, 1999, during which licenses may be renewed for less than 12 months, or more than 12 months, in order to implement a staggered license renewal schedule in which licenses would be renewed each month throughout the year. Once the transitional period is completed, each license shall be renewed for a 12-month period. The board may promulgate rules and regulations relating to the procedures for renewal of licenses. Upon the renewal of a license, the board shall reclassify or confirm the license both as to the types of Work and bid limits as specified in this section. A licensee may apply for and, on proof satisfactory to the board, may receive an increase in the amount of his or her bid limit change his or her classification, or verify his or her license with a reciprocating state for fees not greater than seventy-five dollars (\$75) as set by the board. Application for renewal of a license, together with the payment of a fee of two hundred dollars (\$200), received by the board at least 30 days prior to expiration, shall serve to extend the current license until the board either renews the license or denies the application. A licensee may apply for inactive status by notifying the board in writing at least 30 days before the expiration of his or her license. The fee for inactive status is two hundred dollars (\$200). The board shall provide by rule for the activities that may be engaged in by an inactive status licensee and for a procedure for reinstatement as an active license holder. At the discretion of the board, a limited license may be issued for a particular project.

(c) The sum or fee of three hundred dollars (\$300) accompanying original applications and sum or fee of two hundred dollars (\$200) accompanying applications for renewals under this section are for the administration and enforcement of this chapter and shall not be refunded to the applicant.

3.1.1.1.1 Section 34-8-3

3.1.1.2 Method of examination.

When the board conducts an examination of an applicant for a license, as much as three days may be devoted to written or oral examination, within the discretion of the board, to ascertain the ability of the applicant to make a practical application of his or her knowledge of the profession of general contracting; and the board shall investigate thoroughly the financial responsibility and past record of all applicants, which will include an effort towards ascertaining the qualifications of an applicant in reading plans and specifications, estimating costs, construction ethics, and other similar matters. The board shall take all applicants under consideration after having examined them and go thoroughly into the records, oral, and written examinations prior to granting any certificate of license. If an applicant is an individual, examination may be taken by his or her personal appearance for examination, or by the appearance for examination of one or more of his or her responsible managing employees, and if a co-partnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm according to its own designation.

3.1.1.2.1 **Section 34-8-4**

3.1.1.3 **Fines; revocation of licenses.**

(a) The board may levy and collect an administrative fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for any violation of any provision of this chapter or the rules and regulations of the board.

(b) The board may also revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or gross negligence, incompetence or misconduct in the conduct of business. Any person may prefer charges of the fraud, deceit, negligence, or misconduct against any general contractor licensed hereunder. The charges shall be in writing and sworn to by the complainant and submitted to the board. The charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within 90 days after the date on which they were preferred. The hearing shall be held at the office of the State Licensing Board for General Contractors in Montgomery, Alabama. A copy of the charges, together with the notice of the time and place of hearing, shall be legally served on the accused by the secretary of the board, any sheriff in the state or by registered or certified mail, at least 10 days before the fixed date for the hearing. In the event that the service cannot be effected 10 days before the hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of the aforementioned condition. At the hearing the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him, her, or them and to produce evidence of witnesses in his, her, or their defense. If, after the hearing, the board votes in favor of finding the accused guilty, the board shall revoke the license of the accused. The board may reissue a license to any person, firm, or corporation whose license has been revoked. The board shall immediately notify the Secretary of State and the clerk of each incorporated city, town, or county in the state of its findings in the case of the revocation or of the reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules and regulations of the board.

3.1.1.3.1 **Section 34-8-5**

3.1.1.4 **Effect of issuance of certificate of license.**

The issuance of a certificate by the board shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed general contractor to perform Work of the types and amounts specified in the license issued to him, her, or it while the license remains unrevoked or unexpired.

3.1.1.4.1 **Section 34-8-6**

3.1.1.5 **Prohibited acts; penalties; cease and desist orders.**

(a) Any person, firm, or corporation not being duly authorized who shall engage in the business of general contracting in this state, except as provided for in this chapter, and any person, firm, or corporation presenting or attempting to file as its own the license certificate of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of license, or who falsely shall impersonate another, or who shall use an expired or revoked certificate of license shall be deemed guilty of a Class A misdemeanor and for each offense for which he or she is convicted shall be punished as provided by law. Furthermore, any person including an owner, architect, engineer, construction manager, or private awarding authority who considers a bid from anyone not properly licensed under this chapter shall be deemed guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(b) Every person, firm, or corporation licensed pursuant to this chapter shall include his or her license number in all construction contracts, subcontracts, bids, and proposals. Any person, firm, or corporation violating this provision shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(c) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this chapter, the board may issue an order to any person, firm, or corporation engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the person, firm, or corporation to forthwith cease and desist from the activity, conduct, practice, or the performance of any Work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the official seal of the board. If the person, firm, or corporation to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of Work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the person, firm, or corporation from engaging in any activity, conduct, practice, or performance of Work as prohibited by this chapter. Upon showing by the board that the person, firm, or corporation has engaged or is engaged in any activity, conduct, practice, or performance of Work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the person, firm, or corporation from engaging in such unlawful activity, conduct, practice, or performance of Work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing, commanding the cessation of the unlawful activity, conduct, practice, or performance of Work complained of, all without the necessity of the board having to give bond. A temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to this subsection shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a fine of up to five thousand dollars (\$5,000) plus costs and attorney fees for each offense. A judgment for penalty, attorney fees, and costs may be rendered in the same judgment in which the injunction is made absolute. The trial of the proceeding by injunction shall be summary and by the trial judge without jury. Anyone violating this chapter who fails to cease Work, after a hearing and notification from the board, shall not be eligible to apply for a contractor's license for a period not to exceed one year from the date of official notification to cease Work. It shall be within the power of the board to withhold approval, for up to six months, of any application from anyone who prior to the application has been found in violation of this chapter.

(d) The submission of the contractor's current license number before considering the bid shall be sufficient evidence to relieve the owner, architect, engineer, construction manager, or awarding authority of any liability under this chapter.

3.1.1.5.1 **Section 34-8-7**

3.1.1.6 **Exemptions from chapter; subcontractor requirements.**

(a) The following shall be exempted from this chapter:

(1) The practice of general contracting, as defined in Section 34-8-1, by an authorized representative or representatives of the United States Government, State of Alabama, incorporated town, city, or county in this state, which is under the supervision of a licensed architect or engineer provided any Work contracted out by the representative shall comply with the provisions of this chapter for "general contractor."

(2) The construction of any residence or private dwelling.

(3) A person, firm, or corporation constructing a building or other improvements on his, her, or its own property provided that any of the Work contracted out complies with the definition in this chapter for "general contractor."

(4) The installation, repair, maintenance, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications in an emergency by a utility regulated by the Public Service Commission, or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications, or any of their respective general contractors or subcontractors, provided the Work is performed under the supervision of a licensed architect or engineer. For purposes of this subdivision, the term "emergency" is defined as a situation whereby service to the consumer has been interrupted or may be interrupted if Work to remedy the emergency is not performed and completed within 60 days, and such other situations that are determined to be an emergency in the discretion of the board.

(5) The repair, maintenance, replacement, reinstallation, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications on a routine, regular, or recurring basis by a utility regulated by the Public Service Commission or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications or any of their respective general contractors or subcontractors, provided the Work is performed under the supervision of a licensed architect or engineer.

(6) Routine or regular maintenance, repair, replacement, reinstallation, or removal of equipment, specialized technological processes, or equipment facility systems as determined by the board with regard to scope, frequency, and specialty of the Work to be performed.

(b) The aforementioned exemptions shall exclude a swimming pool contractor. Provided, however, a person, firm, or corporation constructing a swimming pool on his, her, or its own property shall be exempted from this chapter.

(c) A subcontractor, as defined in subsection (c) of Section 34-8-1, is subject to and shall comply with all the provisions of this chapter as specified for general contractor except as follows:

(1) A subcontractor shall pay one-half the fees as required in this chapter for general contractor.

(2) No bid limits shall be established for a subcontractor.

(3) A subcontractor shall submit with license application and renewals a statement of financial condition as prescribed by the board.

(4) A subcontractor shall furnish three references from any combination of the following: Licensed general contractors, registered professional engineers, or registered architects, or qualified person, as declared by the board, for whom they have worked. If a subcontractor has only been employed by one company, the subcontractor shall provide the following: Three or more jobs he or she has worked on, the amounts of the contracts, the time period of the contracts, the location of the contracts, and a statement of experience.

(5) A subcontractor is not required to be licensed at the time a project is bid, but must be licensed with the board prior to beginning Work on the project.

(6) A general contractor license and license number issued by the board to subcontractors shall denote subcontractor status.

(7) A subcontractor is not required to sit for any examination before being licensed.

3.1.1.6.1 Section 34-8-8

3.1.1.7 Copy of chapter to be included in plans of owners, architects, and engineers; inclusion of license number on bid.

(a) All owners, architects, engineers, construction managers, and private awarding authorities preparing plans and specifications for Work to be contracted in Alabama pursuant to this chapter shall include in their invitations to bidders, including but not limited to all public and private advertisements, and their specifications a copy of the portions of this chapter as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered. Any person including an owner, architect, engineer, construction manager, or private awarding authority who violates this section shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

(b) All owners, architects, engineers, construction manager, or private awarding authority receiving bids pursuant to this chapter shall require the person, firm, or corporation to include his or her current license number on

the bid. The owner, architect, engineer, construction manager, or private awarding authority shall reject all bids that do not contain the current license number of the general contractor submitting the bid. All persons who violate this subsection shall be guilty of a Class C misdemeanor and shall for each offense for which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

3.1.1.7.1 Section 34-8-9

3.1.1.8 Issuance of building permits.

Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, village, or county in Alabama charged with the duty of issuing building or other permits for the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure site Work, grading, paving or project or any improvement where the cost of the undertaking is fifty thousand dollars (\$50,000) or more, shall, before he or she shall be entitled to the issuance of permits, furnish satisfactory proof to the inspector or authority that he or she is duly licensed under this chapter. It shall be unlawful for the building inspector or other authority to issue or allow the issuance of the building permit unless and until the applicant has furnished evidence that he or she is either exempt from this chapter or is duly licensed under this chapter to carry out or superintend the Work for which the permit has been applied. The building inspector, or other authority, violating the terms of this section shall be guilty of a Class C misdemeanor and shall for each offense of which he or she is convicted be punished in accordance with Sections 13A-5-7 and 13A-5-12.

3.1.1.8.1 Section 34-8-10

3.1.1.9 Indictment or complaint.

In all prosecutions for the violation of the provisions of Section 34-8-6 for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit, or complaint that "A. B. unlawfully engaged in business as a general contractor, without authority from the licensing board for contractors so to do."

3.1.1.9.1 Section 34-8-20

3.1.1.10 Creation; composition; appointment and removal of members.

In order to safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting, there shall be a State Licensing Board for General Contractors, consisting of five members, who shall be citizens of this state and appointed by the Governor. Each of the members shall be a general contractor, within the meaning of this chapter, with at least 10 years' experience in the field as a contractor. At least one member of the board shall have as a larger part of his or her business the construction of highways. At least one member of the board shall have as a larger part of his or her business the construction of public utilities. At least one member shall have as a larger part of his or her business the construction of buildings. The members of the board shall be appointed for one, two, three, four, and five years respectively, their terms of office expiring on December 31 of those years. Thereafter, on the thirty-first day of December in each year the Governor shall appoint to fill the vacancies caused by the expiration of the term of office a member for a term of five years. In appointing members to the board, the Governor shall select those persons whose appointments, to the extent possible, ensure that the membership of the board is inclusive and reflects the racial, gender, urban/rural, and economic diversity of the state. Each member shall hold over after the expiration of his or her term until his or her successor shall be duly appointed and qualified. If a vacancy shall occur on the board for any cause, the vacancy shall be filled by the appointment of the Governor, and the Governor may remove any member of the board at any time, with or without cause.

3.1.1.10.1 Section 34-8-21

3.1.1.11 **Oath of board.**

Each member of the board shall before entering upon the discharge of the duties of his or her office take and file with the Secretary of State the oath required by Section 279 of the Constitution of Alabama.

3.1.1.11.1 **Section 34-8-22**

3.1.1.12 **Officers; bonds; compensation and expenses; rules and regulations.**

When the Governor appoints the board, he or she shall designate and commission one member as the chairperson, another as vice-chairperson, and another as secretary-treasurer. The board may make the bylaws, rules, and regulations as it shall deem best, provided the same shall not conflict with the laws of the State of Alabama. The secretary-treasurer shall give bond in the sum as the board shall determine with the surety as shall be approved. The bond shall be conditioned upon the faithful performance of the duties of the office and for the faithful accounting of all moneys and other properties as shall come into his or her hands. Each member of the board shall receive two hundred dollars (\$200) per day for attending sessions of the board or its committees, and for time actually spent in necessary travel in attending meetings of the board or its committees and in addition shall be reimbursed for necessary travel expenses as are paid to state employees incurred in carrying out this chapter. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized compensations, office rent, and supplies shall be paid out of the State Licensing Board for the General Contractors' Fund in the State Treasury in the manner provided in Section 34-8-25, provided, that no funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts as stipulated in the general appropriation bill.

3.1.1.12.1 **Section 34-8-23**

3.1.1.13 **Seal.**

The board shall adopt a seal for its own use. Such seal shall have the words "License Board for Contractors, State of Alabama," and the secretary shall have the charge, care, and custody thereof.

3.1.1.13.1 **Section 34-8-24**

3.1.1.14 **Meetings; quorum.**

The board shall have four regular meetings in each year, one in January, one in April, one in July, and one in October, for the purpose of transacting business which may properly come before it, and as many special or adjourned meetings as the board may deem necessary, on call of the chair of the board. Special or adjourned meetings may be held at the time the board provides in the bylaws or at a time the board may provide by reasonable resolution. Due notice of each regular meeting and the time and place thereof shall be given to each member by mail at least one week prior to the meeting. Three members of the board shall constitute a quorum.

3.1.1.14.1 **Section 34-8-25**

3.1.1.15 **Records and accounts.**

The secretary-treasurer shall keep a record of the proceedings of the board, shall receive and account for all the moneys derived from the operation of this chapter and shall deposit, or cause to be deposited, all such moneys in the State Treasury to the credit of the State Licensing Board for General Contractors; and the funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certificate or voucher certified by the secretary-treasurer of the board. Any funds remaining in the State Treasury to the credit of the State Licensing Board for General Contractors at the end of each year shall be paid into the General Fund of the state on or before January 15 in each succeeding year. The board has the right, however, at all times to retain a sum not in excess of 33 percent of its budget of the previous year to meet any emergency that may arise which may affect its efficient operation.

3.1.1.15.1 **Section 34-8-26**

3.1.1.16 **Register of applicants; roster of contractors; annual report; investigation and report of complaints.**

The secretary-treasurer shall keep a record of the proceedings of the board and a register of the applicants for license, showing for each the date of application, name, qualifications, place of business, and whether the license was granted or refused. The books and register of this board shall be prima facie evidence of all matters recorded therein, and a certified copy of such books or register, under the seal of the board, attested by its secretary, shall be received in evidence in all courts in this state in lieu of the original. A roster showing the names and places of business of all licensed general contractors shall be prepared by the secretary of the board as soon as convenient after the board first meets each year. Such roster, which shall include a copy of the licensing law, shall be printed by the board out of funds of the board, as provided in Section 34-8-25, and a copy mailed to and placed on file by the clerk of each incorporated city and town in the state and to and by the probate judge of each county in the state. On or before March 1 of each year, the board shall submit to the Governor a report of its transactions for the preceding year and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the board, attested by the affidavit of the chairman and secretary and a copy of the roster of licensed general contractors. It shall be the duty of the secretary-treasurer to investigate and report to the board each complaint filed relative to violation of this chapter.

3.1.1.16.1 **Section 34-8-27**

3.1.1.17 **Appeals.**

Any party aggrieved by any decision of the State Licensing Board, either in denying an application for license as a general contractor or in revoking a license, may appeal to the Circuit Court of Montgomery County by filing a bond with the clerk of the court, conditioned to pay all costs of the appeal. Upon notice of the appeal being served upon the Licensing Board, an issue shall be made up by the court between the appellant and the Licensing Board, in which the appellant shall allege in what respect the action of the Licensing Board was erroneous and prejudicial to him or her; whereupon the court shall hear the evidence and, without regard to the decision of the Licensing Board, shall render such decision as the court is of the opinion the Licensing Board should have rendered in the first instance.

3.1.1.17.1 **Section 34-8-28**

3.1.1.18 **Distribution of funds; annual report.**

(a) An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2, and an amount of fifty dollars (\$50) from the fees required for application and renewal of the license of a subcontractor pursuant to Section 34-8-7, shall be distributed by the State Licensing Board for General Contractors to all accredited public institutions of higher education offering American Council for Construction Education accredited courses in building science, and to all accredited public institutions of higher education offering courses in building science which are in the candidate status of the American Council for Construction Education and to institutions of higher education offering courses leading to a bachelor of civil engineering degree which offers courses in highway engineering and construction at the undergraduate and graduate levels and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Funds identified by the general contractors and subcontractors for building science shall be distributed pro rata among institutions based upon the number of full-time equivalent students enrolled in the department of building science at the institution. Funds identified by the general contractors and subcontractors for civil engineering shall be distributed pro rata among institutions based upon the number of full-time equivalent civil and pre-civil engineering students enrolled at the institution. These funds shall be distributed 30 days after certifications of enrollment packages have been received from all eligible public institutions of higher education.

(b) Revenue derived from the additional fees for all licenses shall be distributed for (1) building science (general construction) purposes and (2) civil engineering (highway engineering or construction, or both) purposes. Contractors shall be given an opportunity to select which program they want to support.

(c) Revenues derived from the additional fees for all licenses that are not specifically designated by contractors for one of the purposes above, shall be distributed between the programs defined in subsection (a) in a pro rata manner based on the number of full-time equivalent students enrolled in each program at each institution.

(d) Each institution receiving funds pursuant to this article for building science purposes shall utilize the funds for research projects relating to the construction industry, for faculty development, for program enhancement, and for continuing education programs related to construction. The funds shall be administered by a committee appointed by the dean responsible for the building science program, and shall include the head of the department of building science, or comparable position, faculty representatives, and representatives of the building science industry advisory committee of the institution.

(e) Each institution receiving funds pursuant to this article for civil engineering purposes shall utilize the funds to enhance activities in the highway engineering or construction area, or both. This includes, but is not limited to, scholarships, fellowships, research, faculty development, and continuing education. Funds received pursuant to this article shall be administered by a committee appointed by the dean of engineering. The committee should undertake, as part of its mission, to work with the public and private sectors of the highway industry to encourage student participation in co-op and summer industry employment programs as well as to lead students toward career employment in the highway industry upon graduation.

(f) Each institution receiving funds pursuant to this article shall provide to the board an annual report on or before January 31 for the preceding fiscal year during which the institution received the funds. This report shall disclose the total amount of funds received by the institution pursuant to this article and shall provide an accurate accounting for the utilization of the funds. The report shall disclose sufficient detail to demonstrate compliance with the utilization specifications prescribed in subsections (d) and (e). Responsibility for the reports shall be retained by the administrative committees formed pursuant to subsections (d) and (e) and the dean appointing the committee.

(g) The board shall retain an amount of five percent of the amount to be distributed pursuant to subsection (a) as a fee for administrative expenses associated with the collection and distribution of the funds.

(h) The provisions of this amendatory section are remedial and curative and shall be retroactive to January 1, 1998.

APPENDIX F-1

NOTICE OF COMMENCEMENT

Date: _____

Pursuant to the requirements of Section 108 of the Michigan Construction Lien Act, the undersigned, being duly sworn, gives Notice that:

1. The legal description of the real property on which the improvement is to be made is as follows:

See attached.

2. The name, address and capacity of the Owner/Lessee for the improvements is:

Name: _____

Address: _____

3. The name and address of the fee owner of the above real property, if the person contracting for the improvement is a land Contract Vendee or Lessee is:

Name: _____

Address: _____

4. The name and address of the general contractor, if any, is:

Name: _____

Address: _____

5. The name and address of the owner's or lessee's designee upon whom all notices or other instruments are to be served is:

Name: _____

Address: _____

6. To Lien Claimants and subsequent Purchasers:

TAKE NOTICE THAT WORK IS ABOUT TO COMMENCE ON AN IMPROVEMENT TO THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT. A PERSON HAVING A CONSTRUCTION LIEN MAY PRESERVE THEIR LIEN BY PROVIDING A NOTICE OF FURNISHING TO THE ABOVE-NAMED DESIGNEE AND THE GENERAL CONTRACTOR, IF ANY, AND BY TIMELY RECORDING A CLAIM OF LIEN IN ACCORDANCE WITH THE LAW.

A PERSON HAVING A CONSTRUCTION LIEN ARISING BY VIRTUE OF WORK PERFORMED ON THIS IMPROVEMENT SHOULD REFER TO THE NAME OF THE OWNER OR LESSEE AND THE LEGAL DESCRIPTION APPEARING IN THIS NOTICE. A PERSON SUBSEQUENTLY ACQUIRING AN INTEREST IN THE LAND DESCRIBED IS NOT REQUIRED TO BE NAMED IN A CLAIM OF LIEN.

A COPY OF THIS NOTICE WITH AN ATTACHED FORM FOR NOTICE OF FURNISHING MAY BE OBTAINED UPON MAKING A WRITTEN REQUEST BY CERTIFIED MAIL TO THE NAMED OWNER OR LESSEE, THE DESIGNEE, OR THE PERSON WITH WHOM YOU HAVE CONTRACTED.

WARNING TO PROPERTY OWNER, LESSOR OR DESIGNEE

MICHIGAN LAW REQUIRES THAT YOU DO THE FOLLOWING:

1. Before the commencement of any actual physical improvement, the owner or lessee shall record in the office of the register of deeds this notice of commencement.
2. Complete and return this form to the person who formally requested it in writing, within 10 days after the postmark on the request. The completed form shall be provided with a blank notice of furnishing to the requestor.
3. Provide a copy of this notice to the general contractor.
4. Post and keep a copy of this notice in a conspicuous place on the real property during the course of the actual physical improvement project.

OWNER OR LESSEE CONTRACTING
FOR THE IMPROVEMENT

By: _____

Its: _____

STATE OF)
)ss.
COUNTY OF)

The foregoing Notice of Commencement and the information contained herein was sworn and verified before me on this _____ day of _____, 20____, in _____

County, by _____ the _____ of _____, a _____
_____ (corporation/limited liability company/partnership), on behalf of the company.

Notary Public, _____ County,
My Commission Expires:
Acting in _____ County, _____

Drafted by and when recorded, return to:

APPENDIX E-2

NOTICE OF FURNISHING

TO: _____
(Name of designee (or owner or lessee) from notice of commencement)

(address from notice of commencement)

PLEASE TAKE NOTICE that the undersigned is furnishing to _____

(name and address of other contracting party)

certain labor or materials for _____
(describe type of Work)

in connection with the improvement of the real property described by the notice of commencement**,

a copy of which is recorded in Liber _____, on page _____, _____
(name of county)

Records or a copy of which is attached hereto.

WARNING TO OWNER:

THIS NOTICE IS REQUIRED BY THE MICHIGAN CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

(printed name of lien claimant)

(address of lien claimant)

By: _____
(printed name and capacity of party signing for lien claimant)

Date: _____

(signature of party signing)

(address of party signing)

PROOF OF SERVICE OF NOTICE OF FURNISHING

STATE OF MICHIGAN)
)ss.
COUNTY OF _____)

_____, a person of suitable age and discretion,
as the duly authorized agent for being first duly sworn in accordance with the law, deposes and states:

_____ Use if service was by certified mail.

That on the _____ day of _____, 20____, he/she mailed a Notice of Furnishing (a true and exact copy of which is attached hereto) by U.S. Certified Mail, Return Receipt Requested, and with postage fully prepaid thereon to the following person(s) with the certified number as indicated:

_____ Use of service was made personally.

That on the _____ day of _____, 20____, he/she personally served a true and correct copy of the Notice of Furnishing (a true and exact copy of which is attached hereto) upon the following person(s) by handing said true copy of said Notice of furnishing personally to:

Addressee/Address	Indicate Whether Owner, Designee or Contractor	Certified Mail Number, if applicable
--------------------------	---	---

(Printed Name)

(Signature)

Subscribed and sworn to before me on
this ___ day of _____, 20____.

Notary Public, _____ County,
My Commission Expires:
Acting in _____ County, _____

I make this statement as the (contractor)(subcontractor) or as _____ of the (contractor) (subcontractor) to represent to the owner or lessee of the property and his or her agents that the property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth in this statement and except for claims of construction liens by laborers that may be provided under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109.

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY SHALL NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

IF THIS SWORN STATEMENT IS IN REGARD TO A RESIDENTIAL STRUCTURE, ON RECEIPT OF THE SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR 108A TO EACH SUBCONTRACTOR, SUPPLIER AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER OR LABORER WHO IS ENTITLED TO NOTICE OF RECEIPT OF THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

(Signature of Deponent)

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

Subscribed and sworn to before me on
this ____ day of _____, 20____.

Notary Public, _____ County, Michigan.
My commission expires: _____.

APPENDIX F-4

PARTIAL UNCONDITIONAL WAIVER

I/we have a contract with _____
(other contracting party)
to provide _____
(description of labor, materials, services provided)
for the improvement to the property described as _____
(legal description)
and hereby waive my/our construction lien to the amount of \$ _____
for labor/materials provided through _____
and \$ _____, for accrued fringe benefit contribution through _____
_____. This waiver, together with all previous waivers, if any, does/does not (circle
one) cover all amounts due to me/us for contract improvement provided through the date shown above.

The following is a true and accurate statement of the status of my/our contract as of the date this
waiver is signed:

STATEMENT OF ACCOUNT

Contract price	\$ _____
Extras	\$ _____
Deduct Credit	\$ _____
Previously Paid	\$ _____
Retention	\$ _____
Balance	\$ _____
This Payment	\$ _____
Balance to become due	\$ _____

(printed name of lien claimant)

(signature of lien claimant)

(title of individual signing for lien claimant)

Address: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

APPENDIX F-5

FULL UNCONDITIONAL WAIVER

My/our contract with _____
(other contracting party)

to provide _____
(description of labor, materials, services provided)

for the improvement to the property described as _____

(legal description)

having been fully paid and satisfied, all my/our construction lien rights against such property are hereby unconditionally waived and released.

(printed name of lien claimant)

(signature of lien claimant)

(title of individual signing on behalf of lien claimant)

Address: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

49. APPENDIX G-1

**CONDITIONAL WAIVER AND RELEASE ON
PROGRESS PAYMENT**

(CA CIVIL CODE § 8132)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant:

Name of Customer:

Job Location:

Owner:

Through Date:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release:

Amount(s) of unpaid progress payment(s): \$

(4) Contract rights, including:

- (A) a right based on rescission, abandonment, or breach of contract, and
- (B) the right to recover compensation for Work not compensated by the payment.

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

50. APPENDIX G-2
UNCONDITIONAL WAIVER AND RELEASE ON
PROGRESS PAYMENT

(CA CIVIL CODE § 8134)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including:
 - (A) a right based on rescission, abandonment, or breach of contract, and
 - (B) the right to recover compensation for Work not compensated by the payment.

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

51. APPENDIX G-3
CONDITIONAL WAIVER AND RELEASE ON
FINAL PAYMENT

(CA CIVIL CODE § 8136)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Disputed claims for extras in the amount of: _____

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

52. APPENDIX G-4
UNCONDITIONAL WAIVER AND RELEASE ON
FINAL PAYMENT

(CA CIVIL CODE § 8138)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following:

(1) Disputed claims for extras in the amount of: _____

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Rider to Toyota Construction General Terms and Conditions

1. This Rider to Toyota Construction General Terms and Conditions (this “**Rider**”) is attached to and a part of those certain Toyota Construction General Terms and Conditions with a revision date of July 2015 (“**Construction Terms**”). To the extent any of the provisions of this Rider are inconsistent with any of the provisions set forth in the Construction Terms, the provisions of this Rider shall govern.

2. Section 3.9(i) of the Construction Terms is hereby deleted and the following is inserted in lieu thereof:

(i) one or more of the following legal entities: Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing Canada Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing Mississippi, Inc., Canadian Autoparts Toyota, Inc., Bodine Aluminum, Inc., TABC, Inc., Mazda Toyota Manufacturing, U.S.A., Inc., and affiliates and/or related entities of TEMA (collectively referred to as “NAMCs” and each individually as a “NAMC”),

3. Section 9.4. of the Construction Terms is hereby deleted and the following is inserted in lieu thereof:

9.4 ***Safety Precautions; Project Safety Rules.*** Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents or Owner, the Owner's safety consultant (if the Owner designates a safety consultant) or Architect-Engineer give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to Owner and Architect-Engineer (with a reference to this Section 9.4) and shall not proceed with that portion of the Work without further written instructions from Owner or Architect-Engineer. If Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by Contractor, Owner or Architect-Engineer shall be responsible for any loss or damage arising solely from those required means, methods, techniques, sequences or procedures. Without limiting the foregoing, Contractor shall comply with the Owner's Guidelines referred to in Section 9.5, and Contractor shall:

(a) be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performing the Work under the Contract Documents. Contractor shall coordinate and, direct and administer the safety activities and take all necessary actions to ensure that the Work is performed with unified safety precautions. at the Project; and

- (b) comply with Owner's project safety rules as may be adopted and amended by Owner from time to time, at Owner's sole discretion, during the Project. Contractor expressly acknowledges receipt of a copy of Owner's current project safety rules. Owner will provide written notice to Contractor of any amendments to its project safety rules.

4. The following is hereby inserted into the Construction Terms as a new Section 9.5:

9.5 *Owner's Guidelines.* Contractor shall comply with all rules, policies and regulations established by Owner relating to the environment, construction, safety and security, including the following manuals and guidelines: (i) safety; (ii) security; (iii) cybersecurity; (iv) environmental management; (v) anti-harassment; (vi) supplier diversity; and (vii) corporate social responsibility. Contractor shall comply with Owner's project security rules, as may be adopted and amended by Owner from time to time, at Owner's sole discretion, during the Project. Contractor acknowledges receipt of a copy of Owner's current project security rules. Owner will provide written notice to Contractor of any amendments to its project security rules. In addition to the requirements set forth in this Section 9.5, Contractor shall be subject to and shall conform to its rules, regulations, policies, procedures and programs at all times while performing the Work to or for the benefit of Owner.

5. Section 40.2 of the Construction Terms is hereby amended by adding the following at the end thereof:

This will be Contractor's sole and exclusive remedy for such suspension and Contractor shall have no other or further claim against Owner for damage or loss resulting from such suspensions of operations, including without limitation any claim for delay, disruption, acceleration or cardinal change.

6. For the avoidance of doubt, the terms of Sections 36 and 39 are subject to terms of Section 40.