

**CONTRACT AND GENERAL
CONDITIONS BETWEEN OWNER AND
CONTRACTOR**

**The Yavapai-Prescott Indian Tribe
Office Warehouse Building
At Heather Heights
Prescott, Arizona**

THIS CONTRACT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR ("**Contract and General Conditions**"), is made this ___ day of _____, 2009, by and between _____, a(n) _____ (the "**Contractor**") and the Yavapai-Prescott Indian Tribe (the "**Owner**").

WITNESSETH:

The Contractor and the Owner hereby agree as follows:

**ARTICLE 1
THE CONTRACT DOCUMENTS**

1.1 CONTRACT DOCUMENTS.

1.1.1 The following documents and the Contract and General Conditions constitute the contract documents (severally and collectively, the "**Contract Documents**") and are as fully a part of the Contract and General Conditions as if set forth herein:

1. Notice of Award, Notice to Proceed and Receipt of Notice dated _____.
2. Performance bond and labor and material payment bond, in form and substance acceptable to Owner.
3. Addenda Nos. _____, dated _____.
4. Specifications and Drawings (as defined in Article 2 and described on Exhibit A attached hereto) (as modified by the above-referenced Addenda and selected alternates as listed herein, if any).
5. The Contractor's proposal, dated _____.
6. Instructions to Bidders.
7. Advertisements to Bid.
8. Certificates of Insurance.

1.1.2 In the event of any inconsistency between any of the Contract Documents, the inconsistency shall be resolved by an interpretation resulting in the strictest degree of liability and obligation to the Owner, as reasonably determined by the Owner.

ARTICLE 2
SCOPE OF WORK

The Contractor shall furnish all labor, materials, tools, utilities, equipment, supervision, coordination, procurement, delivery, construction, installation, programming, start-up, check-out, demonstration, testing and other construction services (the "**Work**") necessary to properly construct and timely complete Owner's project known generally as Yavapai Prescott Indian Tribe Office Warehouse Building at Heather Heights (the "**Project**"). The Work shall be performed in strict and absolute accordance with the specifications and drawings (the "**Specifications and Drawings**") for the Project, prepared by Owner's architect on the Project, MNA, Inc., 4521 East Virginia Avenue, Suite 200, Denver, CO 80246 (the "**Architect**").

ARTICLE 3
CONTRACT AMOUNT, CONTRACT TIME AND LIQUIDATED DAMAGES

3.1 **CONTRACT AMOUNT.** The Owner shall pay the Contractor for the Contractor's complete performance of the Work, the lump sum of _____ Dollars (\$_____) for the Base Bid and alternates, as applicable (the "**Contract Amount**"). The Contract Amount is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.2 **CONTRACT TIME.** The Contract Time (as defined in Subparagraph 11.1.1) shall be _____ calendar days.

3.3 **LIQUIDATED DAMAGES.** Liquidated damages as described in Subparagraph 11.1.2, shall be zero (**\$0.00**) per calendar day (the "**Liquidate Damages Amount**") for each day Contractor delays in accomplishing Substantial Completion (as defined in Subparagraph 11.1.3) of the Work by the Substantial Completion Date (as defined in Subparagraph 11.1.1).

3.4 **OVERHEAD AND PROFIT.** Limits on the amount of overhead and profit allowed on Change Orders (as defined in Subparagraph 15.1.2) are specified in Article 15.

3.5 **APPROVALS.** The Owner shall, to the extent required, secure approval of the Contract and General Conditions by having the Secretary of the Interior and the Commissioner of Indian Affairs endorse the same pursuant to 25 U.S.C. § 81, as amended, or as otherwise required by Applicable Law (as defined in Paragraph 10.10).

ARTICLE 4
CERTAIN DEFINITIONS AND GENERAL PROVISIONS

4.1 **DEFINITIONS.** As used herein, the following terms and phrases have the meanings provided in this Article 4:

4.1.1 "**Contract**" means all of the Contract documents enumerated in Subparagraph 1.1.1. The Contract may be amended or modified only by a Modification.

4.1.2 "**Cost**" has the meaning provided in Subparagraph 15.1.3.

4.1.3 "**Modification**" means any of the following:

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

2. A Change Order properly signed by all parties pursuant to Article 15; or
3. A Field Information Memorandum (as defined in Paragraph 15.4) for a minor change in the Work issued by the Architect pursuant to Paragraph 15.4.

A Modification may be made only after the Contract and General Conditions is mutually executed.

4.1.4 "Project" has the meaning provided in Article 2, of which, the Work is a part.

4.1.5 "Shop Drawings," "Product Data," and "Samples" have the meanings provided in Paragraph 7.12.

4.1.6 "Standard of Care" means that degree of skill, competence and expertise exercised by contractors having at least twenty (20) years of experience of properly and timely constructing first-class projects similar to the Project. The Standard of Care shall be deemed to apply to and govern Contractor's performance of all of its obligations and responsibilities hereunder and be the basis from which any party presiding over any dispute resolution proceeding arising hereunder shall evaluate Contractor's performance.

4.1.7 "Start Date," "Substantial Completion," "Substantial Completion Date," "Final Completion," and "Final Completion Date" have the meanings provided in Articles 11 and 12, respectively.

4.1.8 "Subcontractor" and "Sub-Subcontractor" have the meanings provided in Paragraph 8.1.

4.1.9 "Work" has the meaning provided in Article 2, and includes, without limitation, all undertakings that are reasonably inferable from the Contract Documents.

4.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.

4.2.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents.

4.2.2 By executing the Contract and General Conditions, the Contractor represents and warrants that it has visited the site, has familiarized itself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of its observations with the requirements of the Contract Documents.

4.2.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and timely completion of the Work.

4.2.4 Words and abbreviations used in the Contract which have well known technical or trade meanings are used in accordance with such recognized meanings.

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

4.2.6 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect in accordance with any schedule agreed upon, or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents.

4.3 COPIES FURNISHED AND OWNERSHIP.

4.3.1 The Contractor will be furnished, free of charge, fifteen (15) copies of the Contract Documents. Additional sets will be furnished for the cost of reproduction and postage.

4.3.2 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Owner, are not to be used on any other project by Contractor, and are to be returned to the Owner at the completion of the Work as a condition to receiving final payment.

4.3.3 It shall be the responsibility of the Contractor to insure that each Subcontractor, Sub-subcontractor and supplier has a current set of those portions of the Contract Documents that may be required for proper execution of their respective portions of the Work.

ARTICLE 5 ARCHITECT

5.1 DEFINITION.

5.1.1 The Architect means the Architect or its authorized representative.

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

5.2 ADMINISTRATION OF THE CONTRACT.

5.2.1 The Architect will provide general administration of the Contract, including performance of the functions hereinafter described.

5.2.2 The Architect will be the Owner's representative during construction, until final payment and including the warranty period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument. The Architect will advise and consult with the Owner as often as required to carry out Owner's Project objectives.

5.2.3 The Architect and Owner shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect and Owner or Owner's representative may perform their functions under the Contract Documents.

5.2.4 The Architect shall make periodic visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in strict and absolute accordance

with the Contract Documents. Such visits shall be of the frequency necessary to adequately observe the progress of the Work. Architect shall use its best efforts to guard the Owner against defects and deficiencies in the Work. The Architect shall not be responsible for the Contractor's ways and means, methods, techniques and procedures in the construction of the Project.

5.2.5 Based on such observations and a review and examination of the Contractor's Applications for Payment (as defined in Subparagraph 12.3.1), the Architect will make recommendations to the Owner as to the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 The Architect will provide evaluations and recommendations regarding the requirements of the Contract Documents. The Architect will promptly render such evaluations and recommendations as necessary for the proper execution or progress of the Work.

5.2.7 All claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred initially to the Architect in the manner provided by Subparagraph 12.4.5, within the time limits prescribed in Paragraph 15.2, for decision by the Architect or the Owner, as the subject matter may require, which will be rendered in writing within a reasonable time.

5.2.8 The evaluations, recommendations and decisions of the Architect shall be consistent with the intent of the Contract Documents.

5.2.9 The Architect and the Owner each have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, Architect will recommend to the Owner that the Owner should require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph 10.8.3 whether or not such Work be then fabricated, installed or completed.

5.2.10 The Architect will review Shop Drawings, Product Data and Samples promptly as provided in Paragraph 7.12.

5.2.11 The Architect will prepare Change Orders in accordance with Article 15 and will have authority to order minor changes in the Work not involving extra cost as provided in Paragraph 15.3.

5.2.12 The Architect will conduct inspections to determine the date or dates of Substantial Completion and Final Completion, shall notify the Owner of a date or dates for inspections, and shall issue a Certificate of Substantial Completion and of Final Completion (as provided in Articles 11 and 12, respectively). Architect will receive written guarantees and warranties, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.13 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in Articles 1 through 17 will not be modified or extended without the prior written consent of the Owner and the Architect, notice of which will be given to the Contractor.

5.2.14 The Architect will not be responsible for the acts or omissions of the Contractor, any Subcontractors or Sub-subcontractors, or any of their agents or employees, or any other persons performing any of the Work except for Architect and those parties for whom Architect may be liable.

5.2.15 In the event Owner terminates the Architect, the Owner may, in Owner's sole and absolute discretion, appoint a successor architect whose status under the Contract Documents shall be that of the Architect.

ARTICLE 6 OWNER

6.1 To the extent available and in the Owner's control, the Owner shall furnish boundary surveys legally describing the boundaries of the Project site.

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

6.3 The Owner may designate a construction consultant from time-to-time ("**Owner's Construction Consultant**") to be present on the site for all or any portion of the Work. The Owner's Construction Consultant may communicate directly with both the Architect and the Contractor. The Owner's Construction Consultant shall promptly advise the Contractor and Architect of any deviation or deficiency in the Work from the Contract Documents. If the Contractor concurs with the Owner's Construction Consultant, the Contractor shall take such steps as are required to conform the Work to the Contract Documents, subject to written approval by the Architect and the Owner of any remedial plan proposed by the Contractor. If the Contractor or Architect disagree with the observation of the Owner's Construction Consultant, the matter shall be referred to the Architect for evaluation and recommendation pursuant to Article 5.

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

ARTICLE 7 CONTRACTOR

7.1 DEFINITION.

7.1.1 The Contractor means the Contractor or its authorized representative. The Contractor, and all Subcontractors and Sub-subcontractors performing Work on the Project shall possess valid Arizona contractor's licenses as required by Applicable Law.

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

7.1.3 All materials and articles of any kind necessary for the Work are subject to the approval of the Owner and the Architect as provided in the Contract Documents.

7.1.4 After the mutual execution of the Contract and General Conditions, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by Change Order, in which case the Owner shall receive all benefit of the difference in Cost involved, except when choice of material or method is designated "or equal" or "acceptable alternates" in the Specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS AND EXAMINATION OF SITE.

7.2.1 By executing the Contract and General Conditions the Contractor warrants that it has examined the site and carefully studied and compared each of the Contract Documents before its execution hereof. The Contractor shall immediately report to the Architect and the Owner any error, inconsistency or omission in the Contract Documents it may discover or should have discovered in its exercise of the Standard of Care. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions so long as the Architect and the Owner are notified thereof unless discovery thereof should have been made by careful examination of the Contract Documents prior to submitting its proposal or otherwise in the exercise of the Standard of Care. The Contractor shall do no Work without appropriate Contract Documents, or when required, approved Shop Drawings, Product Data, Samples or interpretations from the Architect.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the Drawings in preference to what the Drawings may measure to scale. In the absence of figured dimensions, the Architect shall be notified and the dimensions provided within a reasonable time. Drawings shall not be scaled in the absence of figured dimensions.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, levels of grades, walks, driveways, or other existing conditions, before executing any Work. Contractor shall immediately report to the Architect any discrepancies between the Drawings and actual field conditions. Failure to report any discrepancy within twenty-four (24) hours after discovery will constitute a waiver of any claim arising out of such discrepancy. This provision shall have precedence over any other notice provisions contained herein.

7.3 SUPERVISION AND CONSTRUCTION PROCEDURES. The Contractor shall supervise the Work in accordance with the Standard of Care. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

7.4 LABOR AND MATERIALS.

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation and any other facilities and services necessary for the proper execution and timely completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. No materials shall be incorporated into the Work that contain asbestos.

7.4.2 Any Work necessary to be performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be pre-approved in writing by the Owner and, if approved, performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to it. When requested in writing by the Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent or violates any policies of the Owner. If the Owner requests such a removal, it shall notify the Architect in writing of its request.

7.4.4 The Contractor shall not permit the use of tobacco products, alcohol or illegal drugs on the Project site.

7.5 WARRANTY.

7.5.1 The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under the Contract will be new, and that all Work will be of good quality, free from faults and defects, fit for its intended purpose and otherwise in strict and absolute conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished hereunder.

7.5.2 The warranty provided in Paragraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy available under Applicable Law, in equity or under the Contract Documents.

7.6 TAXES. The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by Applicable Law in connection with the performance of the Work. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-1305.02 and furnish evidence of such bond to Owner prior to submitting any Application for Payment.

7.7 PERMITS, FEES AND NOTICES.

7.7.1 Unless otherwise provided in the Specifications and Drawings or by Addendum, the Contractor shall secure and pay for all permits, fees, inspections and reinspections necessary for the proper execution and completion of the Work, including, without limitation the following permits and fees: building, plumbing, mechanical, electrical and fire protection permits, water meters, fire protection water service fees, sewer connection fees, sewer fees or assessments, gas service fees and electric service fees payable to the utility companies.

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

7.8 SUPERINTENDENT. The Contractor shall employ a competent superintendent ("**Superintendent**") and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Contractor shall assign to the Project a Superintendent prior to the pre-construction meeting and shall furnish to the Owner the Superintendent's resumé. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the written consent of the Owner, unless the Superintendent proves to be unsatisfactory to the

Contractor and ceases to be in its employ, in which event, Contractor shall replace such Superintendent with a replacement superintendent satisfactory to Owner. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor.

7.9 **RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** The Contractor shall be responsible to the Owner for the acts and omissions of all its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any kind with the Contractor.

7.10 **PROGRESS SCHEDULE AND REPORTS.**

7.10.1 The Contractor, within seven (7) days after being awarded the Contract, shall prepare and submit for the review and approval of the Owner and the Architect, its planned construction progress schedule for the Work (the "**Construction Progress Schedule**"), as provided in the Specifications. The Construction Progress Schedule shall be related to the entire Project and shall indicate the dates for the commencement and completion of the various components and phases of construction and shall be revised monthly or as required by the conditions of the Work, upon request of and subject to the review and approval of the Owner and the Architect. The Contractor shall comply with the requirements of the Specifications in connection with the preparation and revision of the Construction Progress Schedule. The Contractor agrees to promptly respond to all inquiries by the Owner and the Architect concerning significant deviation of the progress of construction from the Construction Progress Schedule. Failure to timely respond to such inquiries or significant delay from the Construction Progress Schedule may result in progress payments being withheld. Approval of the Construction Progress Schedule by the Owner and the Architect shall not relieve the Contractor from its obligation to complete the Project within the Contract Time.

7.10.2 The Contractor shall furnish to the Owner and the Architect four (4) copies of a complete list of all major items of architectural, mechanical, plumbing and electrical equipment and materials within fourteen (14) days of the Start Date. Such list must include projected submittal dates for all items of material for which submittals are required and delivery dates for all items of material and equipment that are considered by the Owner or the Architect, in their sole discretion, critical or which may require, long lead time. A partial list will not be acceptable unless prior written permission is obtained from the Owner and the Architect. The Contractor shall prepare and provide to the Owner and the Architect a weekly status report (the "**Construction Schedule Status Report**") which will inform the Owner that, with respect to each category of the Construction Progress Schedule and each item on the material delivery date list, the Work or delivery is: (a) on schedule; (b) behind schedule, but will not interfere with the completion of the Project within the Contract Time; or (c) behind schedule and may prevent the completion of the Project within the Contract Time. In the event that the Construction Schedule Status Report indicates that a delay has occurred or may occur that may prevent the completion of the Project within the Contract Time because the Work in a particular category is behind schedule or a delay in material deliveries is anticipated, the Construction Schedule Status Report shall contain a statement of the corrective measures being undertaken by the Contractor.

7.10.3 For purposes of determining time extensions resulting from additional work ordered by the Owner, adverse weather or other delays, all float or slack time in the Construction Progress Schedule shall be owned and controlled by the Owner. The Owner shall allow use of such float or slack time by the Contractor as long as such allocation of float or slack time does not adversely affect the completion date of the Project. No additional time shall be allowed for

claims for delay, whether or not caused by or the fault of the Owner, if such delay is less than the available float or slack time available for the particular task.

7.10.4 The Contractor shall submit to the Owner and the Architect such financial and cash flow information regarding job progress, Applications for Payment and proposed Change Orders to allow Owner to prepare or have prepared, financial reports, complete through the end of the preceding month, containing a statement of expenditures and a statement of anticipated cash flow. The information furnished shall, at a minimum, account for appropriated amounts, expended amounts and all pending Change Order proposals. The information for the cash flow statement must reflect Contractor's best estimate of anticipated monthly outflows for the remainder of the Project for all items under the Contract. All such information shall be furnished with each Application for Payment.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE.

7.11.1 The Contractor shall maintain at the site for the Owner three (3) copies of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, and other Modifications, in good order and marked carefully and accurately to record on a daily basis all changes made during construction, all of which shall be available to the Owner and the Architect at all times. These data shall be delivered to the Owner and the Architect upon completion of the Work. The Drawings indicating the changes shall be maintained throughout the duration of the Project and permanent record drawing mylars shall be prepared from them by the Contractor at the Contractor's expense and submitted to the Owner and the Architect as a condition of final payment.

7.11.2 The Contractor shall also submit to the Owner and the Architect three (3) copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, as a condition of final payment, which by reference in the several divisions of the Specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are required by the Contract Documents and are prepared by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

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

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

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has

checked and coordinated all Shop Drawings, Product Data and Samples with the requirements of the Work and of the Contract Documents.

7.12.5 The Architect will review and take other appropriate action with respect to Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay.

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

7.12.7 The Architect's review of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Architect in writing of such deviation at the time of submission and the Owner and the Architect have given written approval to the specific deviation. Architect's approval thereof shall not relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

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

7.13 **CUTTING AND PATCHING OF WORK.** The Contractor shall accurately and carefully do all cutting, fitting, or patching of its Work that may be required to make its several parts fit together properly, and shall not endanger any Work, either new or existing, by cutting, excavating or otherwise altering such Work or any part thereof.

7.14 **CLEANING UP.**

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

7.14.2 If the Contractor fails to satisfactorily clean up, the Owner may do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 9.4.

7.15 **COMMUNICATIONS.** The Contractor shall forward all written communications to the Owner through the Architect, with a copy to Owner's Construction Consultant, unless otherwise required herein.

7.16 **INDEMNIFICATION.**

7.16.1 To the fullest extent permitted by Applicable Law, Contractor agrees to defend, indemnify and hold harmless Owner, Owner's Construction Consultant, Architect, Architect's consultants and their respective affiliated entities, parents, subsidiaries, partnerships, joint

ventures, limited liability companies, corporations, members, trusts, and assigns, of every tier, and their respective directors, officers, partners, agents, employees, volunteers, members, managers, trustees, shareholders and any successors or assigns of any of the foregoing (severally and collectively, the "**Indemnified Parties**"), for, from and against any suit, claim, controversy, proceeding, issue, action, demand, liability, damage (whether direct or consequential), expense, penalty, fine, settlement, judgment, or other loss (severally and collectively, "**Claim**") arising out of or related to the performance of the Work, regardless of whether a Claim is sustained or asserted before or after the Final Completion Date or earlier termination of the Contract, and all attorneys' fees, consultants' fees, and all other expenses, whether or not taxable, incurred by any of the Indemnified Parties in the investigation, defense, settlement and satisfaction thereof. Contractor's obligation to defend, indemnify and hold harmless the Indemnified Parties extends to and includes every Claim, just or unjust, whether based on a tort, strict liability, contract, lien, stop notice, Applicable Law or other theory of relief or liability, and whether the injury complained of arises from any death, personal injury, sickness, disease, property damage (including loss of use), trespass, economic loss, patent infringement, copyright infringement, hazardous substance release, oil discharge, waste disposal, taking of endangered species, or otherwise; provided, however, that Contractor shall not be obligated to indemnify the Indemnified Parties for the Indemnified Parties' sole negligence if a Claim is based on a negligence theory of recovery.

7.16.2 In any and all Claims against the Indemnified Parties by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.16.3 The acceptance by Owner or its representatives of any certificate of insurance providing for coverage other than as herein required to be furnished and maintained shall in no event be deemed a waiver or satisfaction of any of Contractor's indemnification obligations hereunder.

7.16.4 This Paragraph 7.16 shall not deprive Owner of any action, right, or remedy otherwise available to Owner hereunder, at law or in equity.

7.17 Contractor shall not perform, or enter into any agreement to perform services for any other person, corporation or entity, without the prior written consent of the Owner, if the performance of the services could result in a conflict with the Contractor's obligations hereunder. Contractor represents that it has reasonably evaluated potential conflicts and has disclosed to the Owner, in writing, any prior or existing relationships which present, or could appear to present a conflict with the Work to be performed.

7.18 **SANITATION.** The Contractor shall provide temporary sanitation facilities as provided in the Specifications and in accordance with OSHA requirements.

7.19 **JOB OFFICE.** A job office and other temporary facilities shall be provided by the Contractor as required by the Specifications.

7.20 **USE OF PREMISES.** The Contractor shall confine its equipment and plant, the storage of materials, and the Work operations to limits indicated by Applicable Law or directions of the Owner and shall not unreasonably encumber the premises with materials or equipment.

ARTICLE 8 SUBCONTRACTORS

8.1 DEFINITION.

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. Subcontractor means a Subcontractor or its authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. Sub-subcontractor means a Sub-subcontractor or an authorized representative thereof.

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

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

8.2.1 If, after the execution of the Contract and General Conditions, the Owner reasonably refuses to accept any Subcontractor, the Contractor shall submit an acceptable substitute Subcontractor and such substitution shall not result in an adjustment to the Contract Amount.

8.2.2 The Contractor shall not contract with any Subcontractor proposed to perform portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom it has a reasonable objection.

8.2.3 If the Owner requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount may be increased or decreased by the difference in Cost occasioned by such change, in which case, an appropriate Change Order will be issued as provided herein.

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

8.2.5 Notwithstanding any provisions to the contrary in the Contract Documents, if any Subcontractor is found not to be qualified to perform the Work, upon written notice from the Owner, the Contractor shall replace the unqualified Subcontractor with a qualified Owner-approved replacement Subcontractor at no additional Cost to the Owner.

8.3 SUBCONTRACTUAL RELATIONS.

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

1. require that such Work be performed in strict and absolute accordance with the requirements of the Contract Documents;

2. require submission to the Contractor of Applications for Payment under each subcontract to which the Contractor is a party, in sufficient time to enable the Contractor to apply for payment to the Owner in accordance with Article 12;
3. require that all claims for additional Costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work be submitted to the Contractor in the manner provided in the Contract Documents for like claims submitted by the Contractor upon the Owner;
4. be accompanied by such proof of insurance as Owner requires;
5. waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance;
6. provide for a fixed or stipulated sum with respect to the compensation payable thereunder;
7. specifically incorporate the Contract by reference in its entirety;
8. provide that Owner is an intended third party beneficiary of the subcontract or purchase order (without liability for benefits received) and an obligee of all express and implied warranties given by any Subcontractor or Sub-subcontractor under such subcontracts or purchase orders or as imposed by Applicable Law, with the right to directly enforce those obligations as a principal, whether before or after the Final Completion Date;
9. provide the Subcontractor's or Sub-subcontractor's consent to be joined in any dispute resolution procedure or proceeding involving Owner and Contractor;
10. provide that Owner shall be entitled to enforce such subcontract or purchase order directly against such Subcontractor or Sub-subcontractor in the event Owner has been damaged by any breach thereof;
11. provide the Subcontractor's or Sub-subcontractor's consent that any such subcontract or purchase order may be assigned to Owner at Owner's option if the Contract is terminated for any reason and obligate the Subcontractor or Sub-subcontractor to perform for the benefit of Owner the remainder of the Work covered by such subcontract or purchase order as long as Owner continues to pay future amounts owing such Subcontractor or Sub-subcontractor under the subcontract or purchase order;
12. require, to the extent of the Work to be performed by the Subcontractor or Sub-subcontractor, that each Subcontractor or Sub-subcontractor be bound to the Contractor by the terms of the

Contract Documents and to assume toward Contractor all the obligations and responsibilities that Contractor assumes toward Owner under the Contract, including the responsibility for the safety of the Work performed by the Subcontractor or Sub-subcontractor; and

13. obligate the Subcontractor or Sub-subcontractor to specifically consent to the provisions of this Paragraph 8.3.

8.4 PAYMENTS TO SUBCONTRACTORS.

8.4.1 The Architect may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of Work done by such Subcontractors.

8.4.2 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by Applicable Law.

ARTICLE 9 SEPARATE CONTRACTS

9.1 **OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS.** The Owner reserves the right to award contracts to other contractors in connection with other portions of the Project.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS.

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate its Work with the work of others.

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

9.2.3 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly attempt to settle such other contractor's claim and defend, indemnify and hold harmless the Owner as provided herein.

9.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS.

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

9.3.2 Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.

9.4 OWNER'S RIGHT TO CLEAN UP. If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Subparagraph 7.14.2, the Owner may clean up and charge the cost thereof to the several contractors as the Owner determines in its discretion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 LAW OF THE PLACE. Unless otherwise provided herein, the Contract and all exhibits attached hereto shall be governed by, construed and enforced in accordance with the internal substantive Applicable Law of the Yavapai-Prescott Indian Tribe. Owner and Contractor hereby irrevocably submit to the process, jurisdiction and venue of the Yavapai-Prescott Tribal Court (the "**Tribal Court**"), which shall be the appropriate legal forum for any claim or dispute arising hereunder. In the absence of any Applicable Law of the Yavapai-Prescott Indian Tribe, the Contract shall be construed first in accordance with any federal Applicable Law, and in the absence thereof, the Applicable Law of the State of Arizona, provided that reference to and use of the Applicable Law of Arizona does not confer any jurisdiction to the State of Arizona for purposes of any claim or dispute arising hereunder. Without limiting the generality of the foregoing, Owner and Contractor hereby waive and agree not to assert by way of motion, defense or otherwise in any claim or dispute that either party is not subject to the personal jurisdiction of the Tribal Court, or that a claim or dispute is brought in an inconvenient forum or that the venue therefor is improper.

10.2 NO WORK STOPPAGE. Contractor shall not directly or indirectly stop performance of any of the Work during the pendency of a claim or dispute. Rather, Contractor will continue performance, under protest, pending resolution of such claim or dispute unless Owner specifically directs otherwise in writing. Contractor's failure to continue such performance shall be a material breach of the Contract. In the event Applicable Law permits Contractor to stop performance of the Work, Contractor shall provide written notice thereof to Owner at least ten (10) days prior to the date on which Contractor intends to stop such performance.

10.3 SUCCESSORS AND ASSIGNS. Contractor shall not assign, convey or transfer any interest in any of the Contract without the prior written consent of Owner, which consent may be arbitrarily withheld, conditioned or delayed. If Owner consents to an assignment, Contractor's assignee shall assume in writing all obligations of Contractor hereunder, and Contractor shall continue to be liable for such obligations. Owner shall have the right, without limitation, to assign the Contract, in whole or in part, to any party in Owner's sole and absolute discretion. This Paragraph 10.3 notwithstanding, the Contract shall inure to the benefit of and be binding upon Owner, Contractor and their respective successors and assigns in the event of any permitted assignment.

10.4 WRITTEN NOTICE. Any and all notices, approvals, consents or other communications required or permitted hereunder shall be given in writing and shall be delivered via: facsimile (electronically confirmed by recipient); personal delivery; registered or certified mail, return receipt requested, postage prepaid; or Federal Express, Airborne, United Parcel Service or other similar nationally recognized overnight courier; and, in each case, addressed to the Owner and to Contractor at the address and/or facsimile numbers set forth below. Any party may designate in writing and deliver in a like manner any changes in address at least five (5)

days before the change becomes effective. Notices, approvals and other communications provided for herein shall be deemed received upon (a) if by facsimile, upon electronic confirmation of receipt; (b) if via personal delivery or overnight courier, the date of delivery to the addressee; or (c) if mailed, three (3) days after the date of deposit in the U.S. Mail. The immediately preceding sentence notwithstanding, any notice received after 5:00 p.m. (local time in the location the notice is received) shall be deemed received on the immediately following business day.

Owner	_____	Contractor	_____
	_____		_____
	_____		_____
Telephone	_____	Telephone	_____
Facsimile	_____	Facsimile	_____

10.5 CLAIMS FOR DAMAGES. Should Contractor suffer injury or damage to person or property because of any act or omission of the Owner or of any of its employees, agents or others for whose acts it is legally liable which claim is not covered by Article 15, Contractor shall submit a written claim to Owner within ten (10) days after Contractor's first observance of such injury or damage.

10.6 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND. The Contractor shall furnish and maintain performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising hereunder in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums of such bonds shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner. Individual sureties will not be acceptable to the Owner.

10.7 ROYALTIES AND PATENTS. The Contractor shall pay all royalties and license fees in connection with the Work.

10.8 TESTS.

10.8.1 If the Contract Documents, or Applicable Law require any of the Work to be inspected, tested or approved, the Contractor shall give the Owner and the Architect timely notice of its readiness and of the date arranged so the Owner and the Architect may observe such inspection, testing or approval. The cost of all such inspections, tests and approvals shall be included within the Contract Amount, except as otherwise provided herein, and except for re-inspection, re-test or re-approval of Work which fails to comply with the Contract Documents.

10.8.2 All equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection, testing and approval in accordance with accepted standards to establish conformity with Specifications, Applicable Law and suitability for intended use all as set forth more particularly in the Specifications.

10.8.3 If after the commencement of the Work the Owner or the Architect determines that any of the Work requires special inspection, testing, or approval not otherwise provided for under Subparagraph 10.8.1, Contractor will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of its readiness as provided in Subparagraph 10.8.1. If such special inspection, testing or approval reveals a failure of the Work to comply with the Contract Documents or Applicable Law, the Contractor

shall bear all costs thereof, including the cost of the Architect's additional services made necessary by such failure, and the costs of such inspection, testing or approval and other expenses related thereto, including without limitation Owner's attorneys' fees, if any, incurred in connection with advising Owner on such failure of compliance; otherwise the Owner shall bear such costs.

10.8.4 Required certificates of re-inspection, re-testing or re-approval to secure compliance with Subparagraph 10.8.3 shall be paid for by the Contractor.

10.8.5 Neither the observations of the Owner or the Architect in its administration of the Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from its obligations to perform the Work in strict and absolute accordance with the Contract Documents.

10.9 LEGAL FEES AND COSTS. The prevailing party shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test, inspection or approval incurred in connection with any effort undertaken to enforce any of the terms of the Contract.

10.10 APPLICABLE LAW. Contractor, Subcontractors and Sub-subcontractors, in their performance of the Work, shall comply with the requirements of all laws, ordinances, codes, rules, regulations, executive orders, judicial opinions, and decisions (severally and collectively, "**Applicable Law**") of all government authorities having jurisdiction over the Project, the site, the Work, or any part thereof, including, but not limited to, the Yavapai-Prescott Indian Tribe, federal, state, county and local authorities. Applicable Law includes, but is not limited to, as applicable, that relating to taxes, employment, social security, unemployment, workers' compensation, wages, occupational health and safety, discrimination, disability, waters of the United States, land use, waste disposal, air, water, endangered species, groundwater, environmental contamination, toxic wastes, hazardous substances, oil, petrochemicals, pesticides, herbicides, building and construction codes and standards, and professional registration requirements.

10.11 SOVEREIGN IMMUNITY. Nothing contained in the Contract shall be interpreted as constituting a waiver, either expressed or implied, of the sovereign immunity of the Yavapai-Prescott Indian Tribe.

10.12 INTENDED BENEFICIARY; OWNER RIGHT TO ASSUME. Owner is an intended third party beneficiary of any subcontracts or purchase orders entered into between Contractor and Subcontractors or material suppliers, without liability for benefits received, and an obligee of all express and implied warranties given by any Subcontractor or material supplier under such subcontracts or purchase orders or imposed by Applicable Law. Owner shall be entitled to enforce such subcontracts or purchase orders directly against such Subcontractors or material suppliers in the event Owner has been damaged by any breach thereof. Any such subcontracts or purchase orders are contingently assigned to and assumable by Owner, at Owner's option.

10.13 FURTHER ACTS. Each party shall execute and deliver all documents and perform all other acts as reasonably necessary, from time-to-time, to carry out the matters contemplated herein.

10.14 SURVIVAL. All indemnities, warranties, representations and other obligations of Contractor hereunder shall survive Final Completion of the Work, Owner's acceptance thereof and/or earlier termination of the Contract.

10.15 EXHIBITS. The attached exhibits are, by this reference, hereby incorporated herein and made a part hereof as if fully restated herein.

10.16 COMPUTATION OF PERIODS. All time periods referred to in this Contract and General Conditions shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act, excluding the date on which payment is due, or give a notice with respect to this Contract and General Conditions shall fall on a Saturday, Sunday or a holiday observed by the State of Arizona or the Yavapai-Prescott Indian Tribe, the act or notice may be timely performed on the next succeeding day that is not a Saturday, Sunday or a holiday observed by the State of Arizona or the Yavapai-Prescott Indian Tribe.

10.17 COUNTERPARTS. This Contract and General Conditions may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts of this Contract and General Conditions may be attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

10.18 INTERPRETATION. Each party has reviewed the Contract Documents and agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the Contract or exhibits hereto.

10.19 NO OTHER AGREEMENT. This Contract and General Conditions constitutes the entire agreement between Owner and Contractor regarding the subject matter hereof and shall not be modified or amended except in a written instrument executed by Owner and Contractor. Any prior agreements or understandings between Owner and Contractor concerning the subject matter hereof are superseded and replaced by this Contract and General Conditions and are hereby rendered null and void.

10.20 SEVERABILITY. The provisions of this Contract and General Conditions are severable and if any provision is determined to be void or unenforceable under any dispute resolution proceeding, such provision shall not affect the validity of any of the other provisions of this Contract and General Conditions.

10.21 RECOURSE LIMITED TO THE SITE. If Owner defaults in the performance of any of Owner's obligations under the Contract and if, as a consequence of such default, Contractor recovers a money judgment against Owner, that judgment shall be satisfied only out of the right, title and interest of Owner in the Project site as such right, title and interest may from time to time be encumbered. Contractor expressly agrees that under no circumstance shall any shareholder, director, officer, employee, agent, member or partner in or of Owner be personally liable for the performance of any of Owner's obligations hereunder. None of (i) Owner, or (ii) any other shareholder, director, officer, employee, agent, member or partner in or of Owner shall have any liability for performance of Owner's obligations under the Contract except to the extent expressly set forth above.

10.22 WAGE RATES. In accordance with the policy of the Yavapai-Prescott Indian Tribe, the Contractor and all Subcontractors shall pay workers on the Project at least the local prevailing wage rates for the Work being performed.

ARTICLE 11
CONTRACT TIME AND LIQUIDATED DAMAGES

11.1 CONTRACT TIME, LIQUIDATED DAMAGES AND RELATED PROVISIONS.

11.1.1 It is understood and agreed that the Work shall be commenced on the date stated in a written notice to proceed (the "**Notice to Proceed**") issued by the Owner or the Architect. Contractor shall achieve Substantial Completion of the Work no later than the number of consecutive calendar days specified as the Contract Time in Paragraph 3.2. Accordingly, the "**Contract Time**" means the period of time between (1) the date specified in the Notice to Proceed on which Contractor may commence the Work (the "**Start Date**"), through (2) the date upon which the Contract Time expires (the "**Substantial Completion Date**"). The Start Date, rate of progress, and Substantial Completion Date are essential conditions of the Contract, and the Contractor agrees that the Work shall be prosecuted regularly, diligently, uninterruptedly and progressively, as directed by Owner from time-to-time, in order to insure full completion thereof within the Contract Time. It is expressly agreed that the Contract Time and all other time limits under the Contract Documents are of the essence.

11.1.2 Contractor understands that if Substantial Completion is not attained by the Substantial Completion Date, subject to adjustments evidenced by Change Orders, Owner will suffer substantial damages that will be extremely difficult and impracticable to accurately ascertain. Contractor agrees that if Contractor is delayed in attaining Substantial Completion by the Substantial Completion Date, subject to adjustments evidenced by Change Orders, Contractor shall pay Owner the Liquidated Damages Amount, as liquidated damages, for each such day of delay beyond the Substantial Completion Date. The Liquidated Damages Amount is a reasonable approximation of Owner's delay damages and may be assessed by Owner as and for liquidated damages and not a penalty, in order to avoid costly litigation that would otherwise be required. Owner may deduct all liquidated damages it assesses against Contractor from any unpaid amounts then or thereafter due Contractor under the Contract. Any liquidated damages not so deducted shall be payable by Contractor to Owner on demand. Any liquidated damages not paid within thirty (30) days of Owner's demand shall accrue interest at the prime rate of interest, as described in the *Money and Investing* section of the Wall Street Journal, plus four percent (4%) until paid in full. Any payment of the Liquidated Damages Amount shall not prevent Owner from exercising any other rights or remedies available to the Owner under the Contract Documents or Applicable Law.

11.1.3 "**Substantial Completion**" of the Work, or designated portion thereof, means that point of time in the progress of the Work when the last of both of the following shall have occurred: (1) the Work is sufficiently complete, in strict and absolute accordance with the Contract Documents such that the Owner may occupy the Project, or a designated portion thereof, if it so elects, for the use for which it is intended, and (2) a certificate of occupancy or other similar applicable certificate shall have been issued by the permit or certificate issuing authorities. The date on which Contractor achieves Substantial Completion shall be set forth on a Certificate of Substantial Completion prepared by the Architect and substantially in the form of AIA Document G704, stating the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. Certification of a designated portion of the Work by the Architect as being "Substantially Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse the Contractor from its duty to

complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not expeditiously completing the remainder of Work.

11.2 DELAYS AND EXTENSIONS OF TIME.

11.2.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, unforeseeable cause beyond the control and without the fault or negligence of the Contractor, its agents and employees and Subcontractors and Sub-subcontractors and their agents and employees, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time shall relieve the Contractor from any obligation attendant upon it under any of the provisions of the Contract. It is expressly agreed that the Owner's liability for delay from any such cause shall be limited to granting a time extension to the Contractor, and there is no other obligation, expressed or implied, on the part of the Owner to the Contractor for delay.

11.2.2 All claims for extension of time shall be made in writing to the Architect and Owner no more than ten (10) days after the occurrence of the event giving rise to a time extension claim; otherwise, such claim is waived. In the case of a continuing cause of delay, only one claim is necessary, provided the Contractor shall promptly notify the Architect and the Owner, in writing, of the date on which the continuing cause of delay has ended.

11.2.3 This Paragraph 11.2 notwithstanding, time extension requests related to weather will be granted by the Owner only in cases where unusually severe weather results in the inability of the Contractor to prosecute the Work. Anticipated adverse weather as determined by the records of the National Oceanic and Atmospheric Administration ("NOAA") will constitute the base line for evaluating monthly weather-related time extension requests. Actual adverse weather days will be recorded on a calendar day basis (excluding weekends and holidays) for each month within the Contract Time and compared to the monthly anticipated adverse weather published by NOAA. "**Actual adverse weather days**" means days on which the Work is impacted by adverse weather such that, Contractor cannot perform Work during fifty percent (50%) or more of Contractor's work day and the Work prevented from being performed is critical to timely completion of the Project. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. If the number of actual adverse weather days exceeds the number of days of anticipated adverse weather days published by NOAA, the Owner will determine whether the Contractor is entitled to a reasonable weather-related time extension. The Construction Progress Schedule must reflect the anticipated adverse weather delays on all weather dependent activities.

11.2.4 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.2.6 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for such interpretations provided such claim must be reasonable in all events.

ARTICLE 12 PAYMENTS AND FINAL COMPLETION

12.1 CONTRACT AMOUNT. The Contract Amount is the total amount of compensation payable by the Owner to the Contractor for the proper and timely performance of all of the Work required under the Contract Documents.

12.2 SCHEDULE OF VALUES. Before the first Application for Payment is submitted to the Owner, the Contractor shall deliver to the Owner and the Architect a schedule of values (the "**Schedule of Values**") reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the Contract Amount, prepared in such form as Owner and Architect may require, and supported by such data to substantiate its accuracy as the Owner and Architect may require. Each item in the Schedule of Values shall include its applicable share of overhead and profit. The Schedule of Values shall be used as a basis for evaluating each Application for Payment. The Owner or the Architect may reject any Schedule of Values that appears susceptible to resulting in a "front-loading" of payments to the Contractor.

12.3 APPLICATION FOR PAYMENT.

12.3.1 On or about the first day of each calendar month during the course of construction, the Contractor shall deliver to the Owner and the Architect, with a copy to Owner's Construction Consultant, if applicable, an itemized application for payment, which shall be in substantially similar form to AIA Document G702 (the "**Application for Payment**"), supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require.

12.3.2 Payment of amounts requested under an Application for Payment shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site under such conditions agreed upon in advance in writing by the Owner.

12.3.3 Material delivered and suitably stored at the site by the Contractor, Subcontractors or Sub-subcontractors shall be insured to the full value of the material and shall be suitably protected. Only such material that is in strict and absolute accordance with the Contract Documents shall be installed in the Work. Until the Final Completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials installed in or delivered to the Project site.

12.3.4 The Contractor warrants and guarantees that title for all Work, materials and equipment covered by the Contract Documents shall pass to the Owner upon the earlier of payment or delivery thereof, and that such Work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances.

12.4 CERTIFICATE OF PAYMENT.

12.4.1 If the Contractor has made Application for Payment as herein provided, then not later than the tenth (10th) day of the month the Architect shall certify or modify the Application for Payment and forward immediately a Certificate for Payment to the Owner for the Owner's approval and payment.

12.4.2 Certification of the Application for Payment will constitute a representation by the Architect to the Owner, based on its observations at the site as provided in Subparagraph 5.2.4, and the data comprising the Application for Payment, that

1. the Work has progressed to the point indicated in the Application for Payment;
2. to the best of Architect's knowledge, information and belief, the quality of the Work is in strict and absolute accordance with the

Contract Documents (subject to an evaluation of the Work as a functioning whole upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to Final Completion, and to any specific qualifications stated in its certification of the Application for Payment);

3. the conditions precedent to the Contractor's entitlement to progress payment as set forth in Subparagraph 12.4.4 have been satisfied; and
4. that the Contractor is entitled to payment in the amount certified.

In addition, the Architect's certification of Contractor's Application for Payment requesting final payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 12.6.2 have been satisfied.

12.4.3 After the Architect has certified an Application for Payment and has promptly forwarded this certification to the Owner for the Owner's approval, upon Owner's written approval thereof, Owner will make a progress payment to the Contractor on the basis of the value of the Work actually performed during the preceding calendar month. Such progress payment shall be made within _____ (___) days after receipt of an Application for Payment subject to the conditions provided in this Paragraph 12.

12.4.4 **CONDITIONS PRECEDENT TO PROGRESS PAYMENT.** Payment of each Application for Payment requesting a progress payment shall be conditioned on Contractor's satisfaction of all of the following conditions:

1. Contractor shall submit with each Application for Payment, a conditional waiver and release on progress payment in strict conformity with the form provided in Arizona Revised Statutes ("A.R.S.") § 33-1008, et. seq, from (a) Contractor, and (b) any Subcontractor and Sub-subcontractor, material supplier and other lower tier provider of Work (collectively, hereafter, "**Lower Tier Claimant(s)**") for Work furnished or performed by Contractor and the applicable Lower Tier Claimants through the end of the month for which the Application for Payment is submitted;
2. Contractor shall submit with each Application for Payment, an unconditional waiver and release on progress payment in strict conformity with the form provided in A.R.S. § 33-1008, et. seq, from (a) Contractor, and (b) all Lower Tier Claimants in the full amount shown on all conditional waivers and releases submitted by Contractor and Lower Tier Claimants in connection with prior Applications for Payment for which Owner has made payment;
3. The "furnished through" provision of each conditional and unconditional waiver and release on progress payment shall be dated to correspond with the cut off date of the Application for Payment for which payment is requested;

4. Contractor shall submit with each Application for Payment, written itemizations of the amount requested for Contractor and each Lower Tier Claimant, through the cut off date of the Application for Payment for which payment is requested, with supporting invoices, billings and other documentation, as reasonably requested by Owner, to validate such amounts;
5. The Application for Payment shall allocate the amount of the progress payment request among all Work actually performed during the preceding month and otherwise conform to the Schedule of Values;
6. The Work for which payment is requested shall have progressed to Owner's reasonable satisfaction; and
7. Owner shall deduct any applicable retainage and withholding as provided herein.

12.4.5 Accompanying each Application for Payment, Contractor shall also include and itemize, and furnish such supporting particulars as the Architect or Owner shall require, all claims for additional compensation Contractor may have against the Owner arising under the Contract Documents, express or implied, or from any cause whatsoever, within the time limits prescribed in Paragraph 15.2. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise, and to prevent vexatious litigation of claims. It is expressly covenanted that the Owner shall have no liability on any such claim unless such claim was submitted in writing at the time and in the manner required hereby.

12.4.6 Unless otherwise provided herein, the Owner shall retain ten percent (10%) of the amount payable under each Application for Payment as insurance of proper and timely performance of the Work. Retention shall be released with the Owner's final payment, subject to all other provisions contained herein. Owner reserves the right, in Owner's sole and absolute discretion, to accept such other security in form and substance acceptable to Owner, in lieu of retention.

12.4.7 No Certificate for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in strict and absolute accordance with the Contract Documents.

12.5 PAYMENTS WITHHELD.

12.5.1 Notwithstanding the Architect's issuance of a Certificate for Payment, Owner may decline to approve any part of an Application for Payment for any of the reasons described in A.R.S. §32-1129.01(D), pursuant to a written notice delivered to Contractor within fourteen (14) days of Owner's receipt of such Application for Payment.

12.5.2 Owner shall make payment for amounts so withheld when the grounds in Subparagraph 12.5.1 are remedied to Owner's reasonable satisfaction.

12.6 FINAL PAYMENT.

12.6.1 Contractor shall accomplish "**Final Completion**" (defined as that point of time during the progress of the Work when all items of the Work, including any punch list items, are

one hundred percent (100%) finished to Owner's reasonable satisfaction, with no items of any scope, large or small, outstanding and remaining to be completed, and all known defective work corrected) of all of the Work within thirty (30) days of the date (the "**Final Completion Date**") on which Contractor accomplishes Substantial Completion of the Work as provided herein. "**Punch list items**" mean minor and incidental items of Work that are capable of being complete within thirty (30) days. The failure to include any items on the punch list does not alter the responsibility of the Contractor to complete all Work in strict and absolute accordance with the Contract Documents.

12.6.2 Upon its completion of the punch list items, Contractor may prepare and submit a written notice to the Architect and the Owner stating that Work is ready for final inspection and acceptance. Upon receipt of such notice from the Contractor the Architect and the Owner will promptly make such inspection and, when the Owner and the Architect find (1) the Work acceptable and approved under the Contract Documents, (2) the Contract fully performed, and (3) Final Completion has been achieved, the Architect shall promptly issue a final Certificate for Payment stating that, to the best of Architect's knowledge, information and belief, and on the basis of Architect's observations and inspections, the Work has been fully completed in strict and absolute accordance with the Contract Documents, and that the entire balance determined to be due the Contractor is payable. The final Certificate for Payment required by this paragraph shall state the date of Final Completion.

12.6.3 **CONDITIONS PRECEDENT TO FINAL PAYMENT.** Provided that Contractor has accomplished Final Completion of all of the Work as evidenced by the issuance of the final Certificate of Payment, Contractor may submit an Application for Payment requesting final payment for the Work, including retention withheld, which payment shall be subject to all of the following conditions:

1. Contractor shall submit with such Application for Payment, a conditional waiver and release on final payment in strict conformity with the form provided in A.R.S. § 33-1008, et. seq, from (a) Contractor, and (b) all Lower Tier Claimants for all Work furnished or performed by Contractor and Lower Tier Claimants as described under such Application for Payment;
2. Contractor shall submit at the time Contractor receives final payment, an unconditional waiver and release on the final payment in strict conformity with the form described in A.R.S. § 33-1008, et. seq;
3. Contractor shall have complied with all other provisions of the Contract and not be in default hereunder;
4. Contractor shall submit within fifteen (15) days of Contractor's receipt of final payment, an unconditional waiver and release on final payment in strict conformity with the form provided in A.R.S. § 33-1008, et. seq, from each Lower Tier Claimant showing that all lien rights and other claims against the Project site with respect to the Work are released through the Final Completion Date and that there are no disputed claims;
5. Contractor shall submit with such Application for Payment a written itemization of the final amount requested with respect to

the Work, for Contractor and each Lower Tier Claimant, with an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, together with, supporting invoices, billings and other documentation, as reasonably requested by Contractor, to validate such amounts;

6. Consent of surety to final payment;
7. Written certification by the Contractor, and such Subcontractors, material suppliers and manufacturers as the Owner shall designate, that no materials have been incorporated into the Work which contain any asbestos; and
8. Contractor shall submit to Owner acceptable warranties for the Work and other closeout documentation as required herein that are in strict accordance with all requirements set forth in the Contract.

12.6.4 Final payment shall be made within _____ (___) days of Final Completion of all of the Work, subject to Contractor's satisfaction of all other conditions precedent to final payment described herein.

12.6.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

12.6.6 Three (3) weeks before the expiration of the warranty period for the Work specified in Subparagraph 16.2.2, or at such other additional earlier time or times as the Owner may agree, the Architect, in company with the Contractor and Owner, shall make an inspection of the Project and certify that to the best of its knowledge, information and belief all defects in material and workmanship occurring during the warranty period have been satisfactorily corrected.

12.7 **BACKCHARGES; SET-OFF.** Owner may withhold, setoff or recoup from any payment due or thereafter to become due Contractor under this or any other agreement, an amount sufficient in Owner's opinion to cover any actual or potential claim or condition that may result in losses, damages, judgments or expenses, including attorneys' fees for which Owner is entitled to reimbursement or indemnity under the Contract or which Owner may incur by reason of Contractor's breach hereof or of any legal duty owing to Owner or to any other party. No interest shall be paid to Contractor on any amounts so withheld, setoff or recouped. In the event amounts payable to Contractor are not sufficient to cover Contractor's obligations hereunder, Contractor shall pay any difference to Owner within ten (10) days of Owner's demand.

12.8 **PROPER IDENTIFICATION OF OWNER ON LIEN WAIVERS.** All lien waivers that Contractor is required to submit hereunder shall reference the record legal owner of the Project site, and shall be otherwise acceptable to Owner in Owner's sole and absolute discretion.

12.9 **JOINT CHECKS.** Owner reserves the right to issue, and Contractor agrees to accept, joint checks and to execute, when requested by Owner, joint check agreements in form acceptable to Owner. Owner shall notify Contractor prior to initiating joint check arrangements.

Contractor consents to Owner communicating directly with each Lower Tier Claimant to verify Contractor's payment history and account status.

12.10 LIENS AND STOP NOTICES. Contractor shall promptly pay for all Work and shall otherwise take all steps necessary to preclude the creation of liens or stop notices arising from the Work. If any lien, stop notice or bonded stop notice is recorded or given by any Lower Tier Claimant, and Owner has paid all amounts due and payable, Owner may withhold from Contractor all sums Owner considers necessary to protect Owner from loss or expense arising from such lien or notice. Further, Contractor will furnish within ten (10) days after Owner's demand, at Contractor's sole cost and expense, all statutory and other bonds necessary to release and discharge the Project site from liens and to result in the release of funds held in response to any stop notice or bonded stop notice despite payment by Owner in accordance with the provisions hereof.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PRECAUTIONS AND PROGRAMS. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with Applicable Law.

13.2 SAFETY OF PERSONS AND PROPERTY.

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

1. all employees engaged in the Work and all other persons who may be affected thereby;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, or under the care, custody or control of the Contractor, Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all Applicable Law governing the safety of persons or property. Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

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

13.2.4 All damage or loss to any property referred to in Subparagraphs 13.2.1.2 and 13.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

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

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

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

ARTICLE 14 CONTRACTOR'S INSURANCE

14.1 INSURANCE REQUIREMENTS. Prior to the commencement of the Work, the Contractor shall obtain, and cause Subcontractors and Sub-subcontractors to obtain, with insurers and in amounts acceptable to the Owner, insurance in the following terms:

14.1.1 Workers' Compensation insurance in statutory amounts to cover obligations imposed by Federal and State statutes having jurisdiction of employees engaged in the performance of the Work, and Employers' Liability insurance with a minimum limit of one million dollars (\$1,000,000) each accident.

14.1.2 General Liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence applicable to the Work and an annual aggregate limit of liability of two million dollars (\$2,000,000). The policy shall include coverage for any and all of the following: bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, and products and completed operations. Further, the policy shall include coverage for the hazards commonly referred to as XCU. The products and completed operations coverage shall extend for five (5) years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision.

14.1.3 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to vehicles assigned to or used in the construction of the Work.

14.1.4 Contractor's equipment insurance covering owned, non-owned, and leased equipment used in connection with the performance of the Work.

14.1.5 Builder's Risk insurance with a limit of liability equal to the final completed value of the Work. The coverage shall be written on an "all risk of direct damage" basis and shall include coverage for flood, water damage, and earthquake and earth movement.

- a. This insurance shall cover any and all materials, equipment, machinery, tools, and supplies, including buildings, and all temporary structures to be used in or incidental to the fabrication, erection, testing or completion of the Work at the construction site, at any off-site location, and while in transit.

- b. This insurance shall cover the insured property against all direct damage, except but not limited to, war and related causes, nuclear perils, infidelity of employees, mysterious disappearance, and ordinary wear and tear.
- c. This insurance shall cover against consequential losses that may occur if there is a delay in the completion of the Work resulting from an insured peril.

14.1.6 Boiler and Machinery insurance, which shall cover boilers and mechanical equipment when, connected and ready for use and following electrical, hydrostatic, pneumatic or gas pressure acceptance tests.

14.1.7 Commercial crime insurance, which shall cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, and computer fraud.

14.1.8 The insurance required by Paragraph 14.1 shall remain in effect until the Owner has accepted its certificate of occupancy for the entire Work, and the Contractor and the Owner have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

14.1.9 The policies required by Subparagraphs 14.1.2, 14.1.3, and 14.1.5 herein shall be endorsed to include the Indemnified Parties as additional insureds and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Owner, or their agents, officials or employees shall be excess and not contributory to insurance required by Subparagraphs 14.1.2, 14.1.3, and 14.1.5.

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

Mr. Craig Johnson, Project Manager
Yavapai-Prescott Indian Tribe
530 E. Merritt
Prescott, Arizona 86301

Certificates evidencing the completed operation liability coverage will be required for five (5) years past the date the Owner accepts its certificate of occupancy for the entire Work.

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

14.1.12 If determined to be in the best interest of the Owner, the Owner may provide for any or all of the coverages required in Paragraph 14.1 pursuant to the conditions set forth herein.

14.1.13 All insurance policies required by this Paragraph 14.1 shall be obtained from a financially sound insurance company rated not less than A-VIII by A.M. Best Company, which insurance company shall be authorized to issue insurance in the State of Arizona.

ARTICLE 15 CHANGES IN THE WORK AND CLAIMS

15.1 CHANGE ORDERS.

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions.

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

15.1.3 The debit or credit, as the case may be, to the Owner resulting from a change in the Work shall be mutually determined, as follows:

1. by a lump sum properly itemized and supported as described below in order to permit evaluation;
2. by unit prices stated in the Contract Documents or subsequently agreed upon; or
3. by actual Cost and specified percentage fee covering overhead and profit.

The total amount of overhead and profit allowed on any additive or deductive Change Order, shall not exceed twelve percent (12%) of the Cost of the Work provided under the Change Order regardless of whether the Work is performed by the Contractor or any level of Subcontractor or Sub-subcontractor. Such percentage shall be inclusive of any general conditions items and aggregate overhead and profit for the Contractor, Subcontractor(s), and Sub-subcontractor(s), if any, and the Cost of any additional supervision and project management. The Cost of bond premiums and sales tax shall be added, in that order, after addition of such percentage.

Every proposed change in the Contract Amount must be substantiated by the Contractor in the form of an itemized breakdown that: (1) clearly describes each item, location and scope of Work; (2) identifies in detail all labor (by trade classification), materials, equipment and services required to complete the Work; (3) lists and extends all respective man hours (or unit hours), multiplied by labor rates; (4) includes separate Cost breakdowns from any and all Subcontractors and Sub-subcontractors involved with the change; and (5) lists such overhead and profit percentage as a separate line item. Contractor shall provide any additional data needed to substantiate Costs, including invoices from suppliers and payroll information upon request of the Owner or the Architect. The Contractor shall respond to requests for such data from the Owner or the Architect within five (5) calendar days of request.

"**Cost**" means the lowest locally available cost to the Contractor, Subcontractor, or Sub-subcontractor after all discounts, rebates and concessions are calculated. Cost is the basis for computing the twelve percent (12%) overhead and profit percentage. The Costs that may be included in the price of a change are limited to the following items directly attributable to the

change in the Work:

1. Costs of materials, including cost of delivery;
2. Cost of labor, including customary employer-paid statutory taxes and insurance thereon; and
3. Rental rates of equipment required to perform the Work, based on AED Blue Book rental rates in the area of the Project.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a debit or credit to Owner, the Contractor shall promptly proceed with the Work involved unless Owner directs otherwise in writing. In such event, Contractor shall be paid on a time and materials basis for any portion of the debit or credit not agreed upon based on detailed time and materials worksheets submitted to Owner and Architect with Contractor's Application for Payment for their respective written certification and approval as provided herein.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are more than one hundred twenty five percent (125%) or less than seventy-five percent (75%) of the contemplated quantities under a proposed Change Order, the applicable unit prices may be equitably adjusted to prevent any unreasonable hardship on the Owner or the Contractor, as the case may be.

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

1. any written interpretation issued pursuant to Subparagraph 4.2.6,
2. any order by the Architect and/or Owner to stop the Work pursuant to Subparagraph 5.2.9 where the Contractor was not at fault, or
3. any written order for a minor change in the Work issued pursuant to Paragraph 15.3,

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

15.2 CLAIMS FOR ADDITIONAL COST OR TIME. If the Contractor decides to make a claim for an increase in the Contract Amount or any other claim or extension of Contract Time, Contractor shall give the Architect and the Owner written notice thereof within fifteen (15) days after the occurrence of the event giving rise to such claim or include such notice with the Application for Payment requesting payment for Work performed in the month in which the event giving rise to the claim occurred, whichever is earlier. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 13.3. All claims shall be made as provided in Subparagraph 12.4.5 within the time limits prescribed herein and no such claim shall be valid unless so made. No change in the Contract Amount or Contract Time resulting from such claim shall be valid unless approved by the Owner in writing and authorized by Change Order.

15.3 MINOR CHANGES IN THE WORK. The Owner and the Architect, subject to the Owner's prior written approval, shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

15.4 FIELD INFORMATION MEMOS. The Architect may, subject to Owner's prior written approval, issue written field information memos ("**Field Information Memos**") which interpret the Contract Documents in accordance with Subparagraph 4.2.6 or which order minor changes in the Work in accordance with Paragraph 15.3 without change in the Contract Amount or Contract Time. The Contractor shall carry out such changes specified in the Field Information Memos promptly.

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK.

16.1.1 If any Work is covered contrary to the request of the Owner or the Architect, it must, if required by the Owner or the Architect, be uncovered for observation and replaced, all at the Contractor's cost and expense.

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

16.2 CORRECTION OF WORK.

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

16.2.2 If, within two (2) years after acceptance of the Work by the Owner or within such longer period of time as may be prescribed by Applicable Law or by the terms of any applicable special guarantee or warranty required by the Contract Documents, any of the Work is found to be defective or not in strict and absolute accordance with the Contract Documents, the Contractor, without cost to the Owner, shall correct it promptly after receipt of a written notice from the Architect or Owner.

16.2.3 All such defective or non-conforming Work under Subparagraphs 16.2.1 and 16.2.2 shall be removed from the site if necessary, and the Work shall be corrected to strictly comply with the Contract Documents without cost to the Owner.

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

16.2.5 If the Contractor fails to correct such defective or non-conforming Work, the Owner may correct it at the sole cost and expense of Contractor.

16.2.6 Material and workmanship corrected during the warranty period shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the corrected material and workmanship is certified as acceptable in writing by the Architect.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon it by special guarantees or warranties required by the Contract Documents or otherwise prescribed under Applicable Law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the acceptance occurs after final payment, payment in an amount equal to any such reduction shall be made by the Contractor to the Owner forthwith upon Owner's demand.

ARTICLE 17 TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE OWNER.

17.1.1 If the Contractor files or has filed against it any petition in bankruptcy, or makes a general assignment for benefit of creditors, or if a receiver is appointed on account of its insolvency, or if Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Construction Progress Schedule and Contract Time, or fails to maintain the insurance provided for herein, or fails to make prompt payments to Subcontractors or for materials or labor, or disregards the Applicable Law of any public authority having jurisdiction over Contractor, the Work or the Project, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner, may, without prejudice to any other right or remedy and after giving the Contractor and/or its surety seven (7) days' written notice, terminate the Contractor and take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

17.1.2 In the event of a termination under Subparagraph 17.1.1, if the unpaid balance of the Contract Amount exceeds the costs of finishing the Work, including compensation for the Architect's additional services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner forthwith upon Owner's demand.

17.1.3 Upon written notice to Contractor, Owner may, for its convenience and without cause, elect to terminate the Contract. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the performance of the Work, including the placing of orders for labor, equipment, materials and other items. If requested by Owner, Contractor shall make every reasonable effort to procure cancellation or termination of all existing orders and subcontracts upon commercially reasonable terms and shall thereafter perform only such Work as may be necessary to preserve and protect any Work already in progress.

17.1.4 In the event of termination under Subparagraph 17.1.3, Owner shall pay Contractor only for the Work executed to the date of such termination. In no event shall Contractor be entitled to any fee, overhead, expense or profit on Work not performed. Owner shall not reimburse Contractor on account of alleged continuing contractual commitment claims with respect to Subcontractors or cancellation penalties or damages related thereto.

[Signature page to Contract and General Conditions]

IN WITNESS WHEREOF, four (4) identical counterparts of this Contract and General Conditions, each of which shall for all purposes be deemed original thereof, have been duly executed by the parties hereinabove named, on the day and year first above written.

OWNER:

YAVAPAI-PRESCOTT INDIAN TRIBE

By _____
Its _____

CONTRACTOR:

By _____
Its _____

APPROVED AS TO FORM:

By _____
Attorney for Yavapai-Prescott Indian Tribe

EXHIBIT A
Specifications and Drawings

1. Project Manual/Specifications dated _____.
2. Construction Documents dated _____.
3. Drawing List.

<u>Sheet No.</u>	<u>Sheet Title</u>	<u>Sheet Date</u>	<u>Revision Date</u> (if any)
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