

Telecommunications Antenna and Apparatus Siting Policy

Subject: Facilities

Policy: Telecommunications Antenna and Apparatus Siting Policy

Revised: December, 1992; December, 2002; September, 2006

Effective Date: September, 2006

Review Date: August, 2010

Responsible Party: Facilities Planning, Design & Construction

100.00 Definitions

- 101.00 Antenna: Any device or system which transmits and/or receives voice, data and video information or communications through the atmosphere or other means, from either earthbound or orbital sources; i.e. microwave, GPS, web camera.
- 102.00 Apparatus: Device, mast, mounts, tripod and other structures used for location of antenna equipment on or at a campus facility.
- 103.00 Campus Facility: Any buildings, fixtures, streets, sidewalks, or grounds, which are owned and/or operated by MSU/MAES. 104.00 Enclosure: A building, room within a building, hut, vault, utility tunnel, or other free-standing, buried, or wall- or floor-mounted enclosure used to house equipment associated with an antenna communications device and/or apparatus installation.
- 105.00 ITC: The Information Technology Center.
- 106.00 MontanaPBS-KUSM: The Montana Public Television station that broadcasts from MSU Bozeman. MontanaPBS-KUSM has the capability, both in equipment and personnel, to receive broadcast signals on virtually all bands and frequencies that are necessary to serve general campus instructional needs.
- 107.00 License: The agreement called Telecommunications Antenna and Apparatus Site License that is executed with non-university commercial entities.
- 108.00 Licensee: The entity that is granted the right to install a telecommunications antenna and/or apparatus on the MSU/MAES campus pursuant to an executed Telecommunications Antenna and Apparatus Site License. Licensees are also referred to as Contractors in the General Conditions.
- 109.00 FPDC: Facilities Planning Design & Construction.
- 110.00 Owner: Montana State University, State of Montana acting through FPDC, including the Agricultural Experiment Station (MAES), acting through the Office of Facilities Services. 111.00 Technical Antenna Committee (TAC): A subcommittee of the UFPB made

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up of representatives of ITC, MontanaPBS-KUSM, Auxiliary Services, FPDC, and other interested parties selected by FPDC.

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112.00 UFPB: The MSU University Facilities Planning Board.

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113.00 University: Montana State University or MSU

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200.00 Background

210.00 MSU/MAES departments and divisions periodically receive requests for permission from University and non-university entities to mount various types of antennas, cameras, GPS devices, other electronic or telecommunication devices and apparatus, and ancillary structures on University facilities or land.

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220.00 MSU recognizes that the aesthetic appearance of the campus, its grounds and buildings, significantly impacts the institution's ability to recruit and retain both quality faculty and students.

230.00 MSU/MAES is committed to developing and maintaining a high quality, user accessible, user affordable, centralized on-campus data and telecommunications system, while recognizing the need to maintain the aesthetic appeal of the campus.

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240.00 The facilities and lands of the University are institutional assets and requests for the right to site telecommunications antenna and apparatus, or other similar equipment on any University facility or property is a decision that shall be made by the administration of the institution and not by individual colleges, departments or building supervisors. Likewise, any value that may be gained by the University through contracts with licensees shall be University resources that will be allocated as directed by the President's Executive Council [PEC]. It is recognized that the colleges, departments or facilities that are impacted by the siting of the equipment should be considered in determining the appropriate allocation of these University resources.

300.00 Purpose

310.00 To assure a centralized and consistent application, review and approval process for the siting and installation of University and non-university telecommunications antenna and apparatus, or similar equipment, and associated enclosures, this policy will outline the procedures for approval of such projects and the guidelines for evaluation of requests, with respect to technical, aesthetic, legal and institutional parameters.

320.00 This policy will direct the activities of UFPB in its consideration of requests made by University and non-university entities to mount or install telecommunications antennas, apparatus, enclosures, or similar equipment on University facilities or land.

400.00 Applications

410.00 Any entity desiring to install telecommunications antenna and/or apparatus on a University facility or land shall present a formal proposal for each installation to FPDC, in accordance with requirements set forth in this policy and must outline how it will comply with the provisions of site license template used by the university and attached hereto as Exhibit A (Telecommunications Antenna and Apparatus Site License). Application form must be

submitted, Exhibits B (Commercial Non-University Application for Telecommunications Antenna and Apparatus Siting) or Exhibit C (On-Campus User Application for Telecommunications Antenna and Apparatus Siting).

420.00 FPDC will organize the application, review and approval processes with input from TAC, through UFPB and shall act as an advisor to the President, and will be the central repository for all agreements resulting from the execution of this policy.

430.00 Each applicant must address the risk of interference with existing equipment of the university and other existing users.

500.00 Considerations for Evaluation of Requests

510.00 Aesthetic: Since the aesthetic appearance of the campus, its grounds and buildings, significantly influences the institution's ability to recruit and retain both quality faculty and students, all proposed installations shall be evaluated with respect to their site location and their potential aesthetic impacts to the surrounding campus environment. This evaluation will be conducted by FPDC and reported to UFPB during the review process.

520.00 Technical: **MSU/MAES** maintains crucial data and telecommunications assets that support substantial investments in institutional, academic, research and student activities. All proposed installations shall be evaluated with respect to potential interference with existing and possible future data and telecommunications operations. This evaluation will be conducted by TAC and reported to UFPB during the review process. The technical evaluation shall address any potential impact on or potential for interference with facilities such as MontanaPBS-KUSM-TV, the university data and telecommunications systems managed by ITC, KGLT-FM Radio, and other users such as MSU's campus 2-way radio system, Montana Highway Patrol's Dispatch Radio, Bozeman Police Department, Bozeman Fire Department dispatch Radio, and other existing licensees. Proposed installations which could effectively duplicate existing university services shall be evaluated by MontanaPBS-KUSM and ITC and comments or recommendations forwarded to UFPB for consideration. On-campus users and existing licensees will be given priority over non-university entities.

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530.00 Legal: Prior to recommending approval to the President, University Legal Counsel will evaluate requests to assure they are consistent with University purchasing regulations, the non-competition policy, and any other pertinent policies. An agreement is required to execute a proposed installation. University Legal Counsel will negotiate on behalf of the University a proposed contract for consideration by the President using the License template attached as Exhibit A.

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540.00 Philosophical: UFPB will evaluate proposed installations with respect to aesthetic, technical, legal and institutional parameters, and in accordance with emerging institutional philosophies such as preferred use, benefit analysis, compensation, etc.

600.00 Requests from Non-University Entities

610.00 The locale and elevation of the University as well as the height of some of its major facilities make it an attractive location for non-university entities that require the use of telecommunications antenna apparatus in the delivery of their services. **MSU/MAES** will not endorse installations that support the commercial activities of private entities, without value accruing to the University.

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620.00 Installations proposed by non-university entities shall not conflict with the overall mission of the University. All proposals must provide fair market value to the university. Factors that may be considered in valuing and approving the proposal are proposals that would make desired improvements to existing campus infrastructure; provide necessary emergency communications backup services (voice/data) to **MSU/MAES**; provide students, faculty and staff with better communications quality cellular or other wireless services; and provide commensurate revenue as compensation to meet the requirement of fair market value to the University.

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630.00 Non-university entities must provide assurance that the installation will not negatively impact the University facilities including building space, roof/building conditions and sites adjacent thereto, and other University resources, including the personnel and other resources of FPDC, MontanaPBS-KUSM, ITC, Auxiliary Services, etc.

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640.00 An installation will not be approved if it will interfere with or intrude upon existing University voice, data, and video telecommunications, research or others systems or equipment or University programs or licensees.

650.00 Access into or onto **MSU/MAES** facilities for operations, maintenance or repairs of licensee's installed equipment must be arranged through the University.

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660.00 All licensees will be required to comply with university policies including parking regulations.

670.00 All commercial non-university applicants must execute and comply with a License such as the template in Exhibit A.

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700.00 Requests from University Entities

710.00 Departments, colleges, or other units of the University and individual researchers, faculty or staff seeking to erect a telecommunications antenna and apparatus for academic or research purposes must submit the application with the approval of the department head or director of the unit and the dean or vice president. FPDC will take the lead in assisting the on-campus user with planning and construction/installation issues with the assistance of TAC. All installations will be consistent with the aesthetic and technical, and legal requirements set forth in this policy.

800.00 Other Considerations

810.00 Telecommunications cables that stretch from one facility or structure to another present special hazards and are not likely to be approved.

820.00 Configuration, location and anticipated frequencies of proposed installations must be reviewed by all licensees who currently have telecommunications antenna apparatus located on the **MSU/MAES** campus.

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830.00 The FPDC Planner and TAC will solicit comments from ITC, MontanaPBS-KUSM and affected Building Supervisors, and report input to UFPB.

840.00 **MSU/MAES** desires to work with other public agencies to enhance public safety in the surrounding community. Requests for the installation of any Public Service Telecommunications antenna and apparatus will be reviewed by the UFPB on an individual basis.

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900.00 Unauthorized Installations

910.00 If any unauthorized installations are discovered, the ~~FPDC~~ will determine whether the operation must cease and be removed immediately, or whether the user must seek approval for continued use through the process outlined in this policy. FPDC will notify the entity responsible for the installation of the required action. Unauthorized users will be responsible for the full cost of removal.

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APPROVED: _____

DATE: _____

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Appendices

Exhibit A

MODEL TELECOMMUNICATIONS ANTENNA AND APPARATUS SITE LICENSE

THIS AGREEMENT is entered into between Montana State University ("University") and _____, ("Licensee").

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RECITALS:

1. The University owns and operates certain real property located at its Bozeman Campus, in Bozeman, Montana for general educational, service and research purposes; and
 2. The University is willing to grant a license for uses of certain property which do not conflict with the primary purposes of owning, operating, maintaining and using such property for university services; and
 3. Licensee has requested a license to access certain existing University property for the purpose of installing, operating and maintaining facilities for the transmission and reception of wireless telephone, video, data, and radio communication signals ("Wireless Services"), antennas, apparatus, and related equipment, building and materials ("Antenna Facilities"); and
 4. University has appropriate facilities at its Bozeman Campus ("Campus") suitable for such uses and is willing to license same contingent upon Licensee complying with all terms and conditions in this agreement.
5. ~~Compliance with Telecommunications Antenna and Apparatus Siting Policy.~~

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

1. PERMIT

1.1 The University does hereby permit the Licensee to enter portions of its Campus each more particularly described in Attachment "A", ("Licensed Premises"), for the purpose of installing, operating, repairing and maintaining the antennas, apparatus, and all necessary equipment, buildings, materials and facilities, including without restriction, all utility lines of Licensee to and from the Licensed Premises required for the transmission and reception of "Wireless Services".

"Antenna Facilities" and "Wireless Services" shall be itemized and specifically described in Attachment "B", attached hereto and incorporated herein. The Licensed Premises initially requested by the Licensee will be inspected by both parties. An inventory of the condition and other existing owned or licensed equipment will be made at that time.

The Licensee will calculate and submit their radio frequency impact, which is included in Attachment B. The University will review the information with the Information Technology Center, MontanaPBS-KUSM TV, Facilities Services, existing licensees, and the affected building supervisors, prior to this License Agreement being executed.

1.2 Licensee understands and agrees that this License shall be subject to the prior rights of all other University interests, public utilities, licensees and permittees. During the term of this License and any extension hereof, Licensee shall have reasonable access to the Licensed Premises 24 hours a day, 7 days a week to install, maintain, operate and repair its Antenna Facilities. Licensee, or Licensee's authorized employee or agent shall contact any person(s) listed on Attachment "D" (as may be amended from time to time) who will provide entrance to the Licensed Premises as required by Licensee.

1.3 Installation shall proceed in accordance with the Installation Plan, (Attachment C) and the General Conditions (Attachment E). Licensee shall submit a Structural Design (Attachment H), an Electrical Design (Attachment I), and a Hazardous Materials Scope of Work (Attachment J). Once the antenna facilities and wireless services are installed and operational, Licensee will provide MSU/MAES with an "as built" plan that shows the equipment and services, within fifteen (15) days after installation.

1.4 Licensee understands and agrees that this Agreement gives Licensee no exclusive rights of access, use or control of any University property except as to its specific Licensed Premises as provided herein and University may, at its sole and exclusive discretion, enter into similar agreements with, among others, competing wireless services providers.

1.5 Installed apparatus must be occupied by an antenna under this agreement within ninety (90) days.

2. TERM

2.1 Unless terminated, as provided elsewhere herein, this License shall continue in force for five (5) years from the Effective Date hereof, which shall be the "Primary Term". Upon mutual written agreement of University and Licensee entered into not less than ninety (90) days prior to the expiration of the Primary Term or any duly agreed upon renewal term, this License may be renewed for up to three (3) additional five (5) year terms, (maximum total twenty years), under the same terms and conditions as set forth.

3. CONSIDERATION

3.1 For the initial five (5) year Primary Term of the License granted herein, Licensee shall pay University annual rental, as determined by University \$, for a maximum of twelve (12) antennas, located on up to twelve (12) apparatus, payable annually, in advance, with the payment of the initial year's Rent payable upon execution of this agreement by University. On the annual Anniversary of the Commencement Date of this License and every subsequent annual Anniversary date thereafter, the Rent shall be increased by Two Percent (2%) over the Rent paid over the preceding year, until any/each 5-year

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term ends. Rent shall be increased after each 5-year term, by Twenty Percent (20%) of the Rent applicable in the immediately preceding year. Rent for subsequent years shall be payable within thirty (30) days of the anniversary of the Commencement Date. Rent shall be payable to Montana State University-Bozeman, ~~FPDC~~ Office, P. O. Box 172760 (~~Plew Facilities Planning, Design & Construction~~), Bozeman, MT 59717-2760.

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3.2 If the University terminates this License for any reason OTHER THAN BREACH BY LICENSEE prior to the expiration of the Primary Term or any renewal term for which consideration has been prepaid, University shall reimburse the Licensee for a pro rata share of the prepaid consideration for the unexpired portion of the term.

4. COORDINATION

4.1 Licensee shall have the right, at its expense, subject to University's approval, which approval shall not be unreasonably withheld, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its system. The Antenna Facilities shall be initially configured generally as set forth in Attachment "B". Licensee shall provide the University with reproducible "as built" drawings of the Antenna Facilities in AutoCAD format. No construction is to be initiated prior to approval of the construction plans by the Director ~~FPDC~~, which approval shall not be unreasonably withheld. Installation will be coordinated with personnel from the ~~FPDC~~ and other necessary university personnel.

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4.2 Licensee acknowledges that University activities and events or public activities at and/or near the Licensed Premises may be occurring at the time Licensee is installing, constructing and/ or maintaining the Antenna Facilities. Installation and construction shall be scheduled by the Licensee in a manner that will accommodate and not interfere with the operations and maintenance of University and activities and events. Thereafter, Licensee shall provide 72 hour advance notice to the University of the need for access for repairs and maintenance. Emergency repairs require reasonable advance notice to the university.

5. EXISTING EASEMENTS

Licensee acknowledges the prior rights of existing easement holders and agrees to coordinate all installations, construction and maintenance activities through the ~~FPDC~~.

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6. GENERAL CONDITIONS DURING CONSTRUCTION

Licensee is required to follow all parts of the University General Conditions during construction as listed in Attachment "E"

7. ANTENNA FACILITIES REQUIREMENTS, INTERFERENCE, AND OPERATION

7.1 The Antenna Facilities shall be designed installed, constructed and maintained in accordance with all University, local, state and federal regulations, codes and laws and University regulations. Licensee will conduct a study at their cost, and submit it to the University showing the impact of their equipment, including frequency, power output, angles of output, and cumulative impact of their equipment added to the campus. The Harmonic Evaluation is attached in Attachment B. The University must approve the installation before any work is begun. The Licensee may not change frequencies without the prior written approval of the University.

7.2 The University reserves the right to contract with a frequency coordinating contractor, at the Licensee's expense, to research the projected impact on the University. Licensee shall operate their Antenna Facilities in such a manner that facilities do not interfere with the operations of the University or any of its departments, facilities, systems, including without restriction, any of its electrical and/or communication systems (voice, data, and/or video), and other Licensees' systems. Whenever University notifies Licensee in writing that the Antenna Facilities interfere with any University operations, Licensee shall immediately and properly remedy or cure the interference as soon as possible. Licensee will provide a clearly marked sign at

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its Equipment, listing the Licensee name, address and emergency telephone number(s) where the University may contact the Licensee or alternate contacts 24 hours per day, seven days per week.

7.3 Licensee expressly agrees that it will design, install, construct, operate, manage and maintain the Antenna Facilities and Licensed Premises in compliance with FCC standards and any other regulatory agencies' regulations, at its sole cost and expense.

7.4 Licensee shall provide the University a copy of the materials provided to the FCC documenting compliance with Procedures Implementing the National Environmental Policy Act of 1969, 47 C.F.R. §§1.1301 et seq. and. The Montana Environmental Policy Act, Title 75, Chapter 1, MCA. The Uncontrolled Exposure calculations for each type of antenna are included in Attachment F. As applicable, this information shall include either the request, with documentation, for exclusion from the requirement to prepare an Environmental Assessment, or other environmental review as may be required under MEPA. If the site is considered accessible to the public, e.g., building mounted, an annual power density survey shall be submitted to University for review on each anniversary of this Agreement.

7.5 Licensee understands that the University currently operates certain telecommunications systems on campus. These telecommunication systems are extremely important to the University. For emergency situations that impact the safe and continuing operation of the University and require immediate resolution, such as interference with police and fire radio service, interference with MontanaPBS-KUSM, interference with MSU/MAES's data and/or telecommunications system, or a damaged piece of equipment that presents an imminent threat to health and safety, Licensee must respond on site within two hours or notification in accordance with the contact list set forth in Attachment G. For non-emergency problems, Licensee must respond within 24 hours of notification. The University will provide Licensee with written notification which will identify whether the problem is an emergency or non-emergency problem.

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8. REPLACEMENT OF FACILITIES/EQUIPMENT

Subject to the prior written approval of the FPDC Director which approval shall not be withheld unreasonably, Licensee may replace or upgrade its Antenna Facilities if such replacement or upgraded facilities are of the same or reasonably similar type as the Antenna Facilities approved herein.

9. COMMUNICATION UTILITY EASEMENT REQUIREMENTS

All Montana State University communications services to the University are provided through a single point of demarcation located at 73 Renne Library, MSU-Bozeman, Bozeman, MT. ITC is solely responsible for extending services beyond the demarcation point. No commercial non-university services will be provided through the demarcation point. Other arrangements with communication service providers must be made and approved by the University. 10.

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10. ABANDONMENT

Upon termination, revocation or expiration of this License, Licensee shall have the right and duty to promptly remove the Antenna Facilities and restore the License Premises as provided elsewhere herein. During the term of this Agreement and any extension thereof, the Antenna Facilities shall remain the exclusive property of Licensee.

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Licensee shall within sixty (60) calendar days after the expiration, non-renewal, cancellation or termination of this License, remove Licensee's Antenna Facilities and other personal property without damaging any property belonging to University. Any property of the Licensee not removed within the aforementioned sixty (60) calendar days shall become the property of University to dispose of in any way that meet the needs and requirements of University. Licensee shall be liable and shall reimburse University for any expense or cost in removal or disposal of Licensee's personal property either abandoned or not removed within the aforementioned sixty (60) days.

11. TERMINATION

11.1 This License shall terminate at such time as:

- a. Licensee abandons the Antenna Facilities;
- b. the Primary Term expires, or any renewal term expired without agreement to renew as provided above;
- c. there is a breach of this License and failure to cure;
- d. ~~the university determines to renovate, demolish or remove the licensed premises, or the appurtenant structure/building with agreement for alternate sites, or~~

~~the University determines the License Premises are necessary for University purposes.~~ 11.2 The University may exercise termination options (d) and (e) above, upon giving Licensee Ninety (90) days prior written notice. The parties will meet as soon as possible to discuss potential alternatives available to Licensee. ~~The university will endeavor to make an alternative location available to licensee to accommodate licensee's needs for antenna facilities in which case this license shall not terminate in such event.~~ If the parties cannot agree to acceptable alternatives to termination, the termination will take effect upon the expiration of the 90 days. ~~All rights and obligations of the parties shall cease as of the date of the damage or destruction, and licensee shall be entitled to a prorated reimbursement of any prepaid rent.~~ The University shall not be liable for any costs, injury, damage, expense or loss accruing to Licensee pursuant to the expiration, non-renewal, cancellation or termination of this License as provided.

11.3 Except as otherwise provided herein, this License also may be terminated without penalty or further liability:

- a. upon ninety (90) days' prior written notice by Licensee if Licensee is unable to obtain, maintain, or cancels any license, permit or governmental approval necessary to the construction and/or operation of the Antenna Facilities or business; or
- b. upon ninety (90) days' prior written notice by Licensee if the Licensed Premises are or become unusable because of Licensee's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong; or
- c. immediately upon written notice if the Licensed Premises or the Antenna Facilities are destroyed or damaged so as to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Licensee shall be entitled to a prorated reimbursement of any prepaid rent.

12. RESTORATION

Upon the cancellation, non-renewal, expiration, or termination of this License for any reason whatsoever, Licensee shall surrender the License Premises in a clean and orderly manner and shall, as requested by the University, restore the License Premises to a condition at least equivalent to that which existed at the time of execution of this Agreement, other than normal wear and tear, including patching, painting, and repairing the areas of university property impacted by the antenna.

13. INDEMNIFICATION

Licensee agrees to indemnify, defend, and hold harmless the University from and against all liability for damages, claims, suits, costs, legal expense, fees (including without limitation, reasonable attorney fees), directly or indirectly caused by Licensee, its officers, representatives, agents, contractors, and employees, in whole or in part, resulting in injuries or death to persons or damage or loss to property related to Licensee's performance of this Agreement. However, Licensee shall not indemnify or save harmless University from such claims or damages to the extent attributable directly and solely to the acts or omissions of University officers, sub-Licensees, representatives, agents, contractors, and employees. Each party shall give the other party hereto prompt and timely notice of any claim or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party; provided, however, such notice shall not be a precondition to indemnification hereunder and provided further that licensee shall have sole right of defense and settlement of any covered claim and university's indemnification hereunder shall be reduced by

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the extent that University's failure to provide prompt notice of a claim hindered Licensee's ability to defend such claim.

14. HAZARDOUS MATERIALS

Licensee shall not keep, store, sell, or dispose of on or about the License Premises any materials, wastes or substances which are in any way explosive, hazardous, dangerous or toxic under any federal, state or local environmental, health or safety law, ordinance, code, statute, rule or regulation such as, lead paint, asbestos, and other illegal contaminants. University grants use of electrical transformers that are usual and customary in telecommunications sites, as long as they are certified not to contain PCBs. Licensee shall notify University immediately if its employees, agents or contractors cause any hazardous substance or oil or fuel spillage or release of hazardous materials on the License Premises. Licensee will provide any necessary Material Safety Data Sheets as required by the University Safety and Risk Management Office. See Attachment J.

15. UTILITIES AND TAXES

All utilities utilized by licensee in connection with the License Premises by Licensee shall be separately metered and shall be paid in their entirety by Licensee. Licensee, subject to University's reasonable approval, may connect to Utilities existing within the University and Licensee shall pay for its own power consumption used after receipt of an invoice from University indicating the usage amount. Licensee shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of Licensee's equipment and improvements.

16. NOTICES

Notices, payments, insurance certificates and other communications to the University pursuant to the provisions hereof shall be sufficient if postage prepaid addressed to:

~~Facilities, Planning, Design and Construction~~ Montana State University-Bozeman
~~Facilities Planning, Design & Construction~~
6th & Grant
P. O. Box 172760
Bozeman, MT 59717-2760

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AND

Legal Counsel Office
Montana State University-Bozeman
211 Montana Hall
P. O. Box 172420
Bozeman, MT 59717-2420

17. COMPLIANCE WITH LAW

The Licensee shall abide by the conditions of this License and all applicable laws and regulations of the City of Bozeman, County of Gallatin, State of Montana and the United States of America relating to its performance of this Agreement. Among other legal responsibilities, Licensee shall be responsible for obtaining, at its cost, any and all permits and/or satisfying any applicable zoning laws, rules or regulations which may be required, prior to commencement of installation of the Antenna Facilities at the License Premises and maintaining same during the entire term of this Agreement and any renewals. At the University's request, Licensee shall supply documentation to the University to establish its compliance with the laws cited hereunder.

18. LIMITATION

The License fee provided herein does not include consideration for, among other things, damages, if any, which may be caused by Licensee to property of University on or off the Licensed Premises or any losses,

costs, expenses or damages to The University caused by acts or omissions of Licensee, its officers, employees, agents, contractors or representatives not in accordance with this License.

19. NO ASSIGNMENTS

Neither this License nor any rights or privileges granted hereunder may be assigned, subcontracted, or sublicensed, except upon written consent of the University, which consent shall not be unreasonably withheld. Provided, Licensee may assign this License without such consent to any person controlling, controlled by, or under common control with Licensee, or any person or entity that, after first receiving all applicable state and federal regulatory approvals, acquires Licensee's communications business and by express written agreement or operation of laws assumes all obligations of Licensee under this License. Upon such assignment, Licensee shall be relieved of all contractual liabilities and obligations hereunder.

20. COMPLETE AGREEMENT

This is the complete agreement between the parties and no additions, amendments, alterations, or changes in this License shall be effective unless reduced to writing and signed by both parties hereto. Additionally, no statements, discussions or negotiations shall be deemed or interpreted to be included in this License unless specifically and expressly provided herein. This Agreement shall supersede and replace any and all prior agreements between the parties with respect to the subject matter hereunder.

21. TIME OF ESSENCE

For the purposes of this License, time shall be deemed to be of the essence.

22. MULTIPLE ORIGINALS

This License may be executed in multiple counterparts, each of which shall be deemed an original.

23. EFFECTIVE DATE

This License shall be effective upon payment of the fees required herein, provision of the required proof of insurance and compliance with laws necessary for installation, and execution of this License by the last party hereto to sign.

24. NONINTERFERENCE

24.1 Licensee agrees and acknowledges that this License authorizes Licensee to use and occupy a portion of certain University properties for the location of its Antenna Facilities only as provided herein and only in a manner which will not interfere with University use of the properties and/or the accomplishment of its education, research and service operations on or off campus, which shall be determined at the sole and exclusive discretion of University and Licensee shall install, operate, repair, and maintain its Antenna Facilities in strict accord with this License.

24.2 University shall take reasonable steps to restrict its subsequent tenants, permittees and/or Licensees from conducting their activities in such ways as to materially interfere with Licensee's activities as authorized hereunder. If the use and operation of similar antenna facilities of a subsequent permittee, or licensee materially interferes with the proper operations of Licensee, University shall, in good faith and exercising due diligence, work with the permittees and/or licensees to negotiate with Licensee to eliminate the interference, including without restriction, making reasonable adjustments in their use and/or operations of their facilities.

24.3 If the use and operation of Licensee's Antenna Facilities materially interferes with the proper operations of subsequent University permittees and/or Licensees, Licensee and all parties affected shall, in good faith and exercising due diligence, work with the University and negotiate with the other parties to eliminate the interference, including without restriction, making reasonable adjustments in its use and/or operations of its Antenna Facilities.

25. PROPERTY INTERESTS

Licensee acknowledges and agrees that Antenna Facilities Sites are first and foremost the property of the University, and that the Licensee is not granted any property interest hereby, and that the terms of this License shall in no way inhibit the right of University to use the Licensed Premises or adjacent property in any manner it deems necessary and proper. Licensee acknowledges that it has inspected the Licensed Premises and takes the Licensed Premises "AS IS". The University makes no warranties or representations that the Licensed Premises are suitable or proper for Licensee's purposes nor does it guarantee utility service to the site or that Licensee's use of Licensed Premises will be non-interfering with University operations as provided in Section 7 of this License Agreement.

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26. NONCOLLUSION

Licensee agrees that it has not been and shall not be a party to any collusion with University or any of their officials, or employees as to the terms or conditions of this License, and has not and will not exchange, give or donate money or other things of value for special consideration to University or any of their officials, trustees, or employees, either directly or indirectly, in the procuring and execution of this License.

27. WARRANTY AND LIMITATION OF LIABILITY

ISSUANCE OF THIS LICENSE DOES NOT CONSTITUTE ANY EXPRESS OR IMPLIED WARRANTIES OF TITLE, INTEREST OR RIGHT TO POSSESSION OF THE LICENSED PREMISES NOR OF THE PHYSICAL CONDITION OF ANY PROPERTY SUBJECT TO THIS LICENSE. LICENSEE SHALL BE RESPONSIBLE FOR IDENTIFYING OTHER PROPERTY INTERESTS, IF ANY, AND ARRANGING WHATEVER ADDITIONAL PERMISSION AS MAY BE REQUIRED. UNIVERSITY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING WITHOUT LIMITATION, CONDITION OF THE LICENSED PREMISES OR ITS FITNESS FOR LICENSEE'S PURPOSE. IN NO EVENT WILL THE UNIVERSITY, ITS REGENTS OR EMPLOYEES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER DAMAGES WHATSOEVER ARISING OUT OF LICENSEE'S USE AND/OR LOSS OF USE AND/OR INABILITY TO USE THE LICENSED PREMISES FOR ANY REASON WHATEVER, INCLUDING BUT NOT LIMITED TO UNIVERSITY'S NEGLIGENT ACTS OR OMISSION.

28. BREACH

A breach of any provision of this License shall act as a breach of the entire License unless the breach is waived in writing by the non-breaching party. No waiver of any breach by any party hereto of any terms, covenants or conditions herein contained in this License shall be deemed a waiver of any subsequent breach of the same, similar or different nature.

29. DEFAULT

Except as otherwise specifically and expressly provided in any paragraph hereto, should any party hereto fail to perform, keep or observe any of the terms, covenants, or conditions herein contained and fails to cure such failure within thirty (30) days from its receipt of written notice of breach/default; or such longer period as may be required to diligently complete a cure commenced within the thirty day period, then this License may be terminated by any party not in default upon (10) days prior written notice.

30. THIRD PARTY BENEFICIARIES

All parties expressly agree that no third-party beneficiaries, expressly or implicitly, are intended to be or shall be created or acknowledged by this License. This License is solely for the benefit of the Licensee and the University, and none of the provisions hereof are intended to benefit any third parties.

31. GOVERNING LAW

This License Agreement shall be governed by the laws of the State of Montana, exclusive of its conflicts of laws provisions as if this Agreement had been executed and delivered in Montana.

32. JURISDICTION AND VENUE

The parties hereto expressly agree and consent to the jurisdiction of the State of Montana and hereby consent and agree that the venue of any litigation relating to or involving this License and/or the rights, obligations, duties and covenants therein shall be in the Eighteenth Judicial District in and for Gallatin County.

33. BINDING EFFECT

The parties agree that this License Agreement shall be binding upon their respective successors, assigns, or transferees of any and every nature, if assignment and/or transfer is permitted by the specific terms of this Agreement.

34. INVALIDITY

If any part of this Agreement is ever ruled to be invalid, illegal, or unenforceable by a court or other body of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect and shall be deemed modified to the minimum extent necessary to make it enforceable. Provided, if the ruling in question is subsequently overruled or obviated by Legislative or other lawful action, the severed provision(s) of this Agreement shall return to full force and effectiveness.

35. LEGAL REPRESENTATIVES

Nothing herein shall be construed to make either party the legal representative or agent of the other party, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of the other party.

LICENSEE:

By: _____

Title: _____

Date: _____

MONTANA STATE UNIVERSITY-BOZEMAN

By: _____

Title: _____

Date: _____

Attachments Incorporated into License

Attachment A – Licensed Premises Description

Attachment B – Antenna Facilities and Wireless Services – includes Frequencies, Frequency Plan Visual

Overview, In-depth Antenna and Radio Specifications, and Harmonic Evaluation, ~~Study~~ Attachment C –

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- Installation Plan
- Attachment D – Contact Information for MSU-Bozeman
- Attachment E – General Conditions
- Attachment F – Uncontrolled Exposure FCC Calculations
- Attachment G – Contact List for Licensee
- Attachment H – Structural Design
- Attachment I – Electrical Design
- Attachment J – Hazardous Material Scope of Work

ATTACHMENT A

License PREMISES DESCRIPTION (University Building Location for Antenna, Equipment, Utilities, Apparatus, etc.)

ATTACHMENT B

ANTENNA FACILITIES AND WIRELESS SERVICES (Services, Frequency, Equipment, Utilities to be Installed)

ATTACHMENT C

INSTALLATION PLAN

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ATTACHMENT D

Contact Information for MSU-Bozeman

Name	Department	Location	MSU Phone	Hours	E-mail-Other
Work Control	Facilities Services	Physical Plant	994-2107	8am-5pm M-F	
Dispatch	University Police	Huffman Bldg	994-2121	24 x 7	
Help Desk	Information	Renne	994-	8am-	helpdesk@montana.edu

	Tech Center	Basement	1777	6pm M-F	
Hedges North	Auxiliary Services		994- 2530	24x7	Cindy Judkins 7-3 M-F MSU Police other hours
Sheila Crowe	ResNet	Hedges North Room 16	994- 4230	8am- 5pm M-F	After hours call 579-4503 cell, home-388- 5354; sheila@montana.edu
Dean Lawver	MontanaPBS- KUSM TV	Visual Communications Room 183	994- 3439	8am- 5pm	After hours call: 581-0853 Dean_lawver@montanapbs.org
Tom Morrison	Information Tech Center	Renne Room 43	994- 5069	8am- 5pm	Director Network, Systems and Academic Computing , tomorrison@montana.edu
David Zeter	Information Tech Center	Renne Room 66	994- 4671	8am- 5pm	Communication Services Manager dzeter@montana.edu
Victoria Drummond	Facilities Planning, Design & Construction	Plew Physical Plant	994- 7914	8am- 5pm	University Planner Victoria.drummond@montana.edu

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- Deleted: Pete Boharski
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- Deleted: , Sys & Operations
- Deleted: 66
- Deleted: .
- Deleted: Pat Simmons
- Deleted: Associate Director Finance, Projects & Tel
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psimmons
- Deleted: Walter Banziger
- Deleted: Director FPDC
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- Deleted: wbanziger
- Deleted: facilities.
- Deleted: FACILITIES PLANNING, DESIGN & CONSTRUCTION¶
SIXTH AVENUE AND GRANT STREET •
P.O. BOX 172760 • BOZEMAN, MONTANA
59717-2760¶
PHONE: (406) 994-5413 • FAX: (406) 994-5665¶

ATTACHMENT E [substituted the most current version of General Conditions and Supplemental Conditions](#)

**GENERAL CONDITIONS
OF THE CONTRACT FOR CONSTRUCTION**

State of Montana Version

(Form Revision Date: March 1, 2008)

ARTICLE 1 – GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1. CONTRACT DOCUMENTS The Contract Documents consist of the Contract between Owner and Contractor (hereinafter the "Contract"), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Contract and Modifications issued after execution of the Contract. A Modification is: (1) a written amendment to the Contract signed by both parties; (2) a Change Order; (3) a Construction Change Directive; or, (4) a written order for a minor change in the Work issued by the Architect/Engineer. The Contract Documents shall include the bidding documents and any alterations made thereto by addenda. In the event of a conflict, discrepancy, contradiction, or inconsistency within the Contract Documents and for the resolution of same, the following order of hierarchy and control shall apply and prevail:

1) Contract; 2) Addenda; 3) Supplementary General Conditions; 4) General Conditions; 5) Specifications; 6) Drawings; 7) Instructions To Bidders; 8) Invitation To Bid; 9) Sample Forms.

If a conflict, discrepancy, contradiction, or inconsistency occurs within or between the Specifications and the Drawings, resolution shall be controlled by the following:

1.1.1.1. As between figures, dimensions, or numbers given on drawings and any scaled measurements, the figures, dimensions, or numbers shall govern;

1.1.1.2. As between large scale drawings and small scale drawings, the larger scale drawings shall govern;

1.1.1.3. As between the technical specifications and drawings; the technical specifications shall govern.

1.1.1.4. Shop Drawings and Submittals: Shop drawings and other submittals from the Contractor, subcontractors, or suppliers do not constitute a part of the Contract Documents.

The Contractor acknowledges, understands and agrees that the Contract Documents cannot be changed except as provided herein by the terms of the Contract. No act(s), action(s), omission(s), or course of dealing(s) by the Owner or Architect/Engineer with the Contractor shall alter the requirements of the Contract Documents and that alteration can be accomplished only through a written Modification process defined herein.

1.1.2. THE DRAWINGS The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, intent, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.3. THE SPECIFICATIONS The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.4. THE CONTRACT The entire Contract for Construction is formed by the Contract Documents. The Contract represents the entire, complete, and integrated agreement between the Owner and Contractor hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1) the Architect/Engineer and Contractor; (2) the Owner and any Subcontractor, Sub-subcontractor, or Supplier; (3) the Owner and Architect/Engineer; or, (4) between any persons or entities other than the Owner and Contractor. However, the Architect/Engineer shall at all times be permitted and entitled to performance and enforcement of its obligations under the Contract intended to facilitate performance of the Architect/Engineer's duties.

1.1.5. **THE WORK** The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to completely fulfill the Contract and the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

1.1.6. **THE PROJECT** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

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1.1.7. **TIME** Time is of the essence in performance, coordination, and completion of the Work contemplated herein. The Owner may suffer damages if the Work is not completed as specified herein. When any duration or time period is referred to in the Contract Documents by days, the first day of a duration or time period shall be determined as the day following the current day of any event or notice starting a specified duration. All durations in the Contract Documents are calendar days unless specifically stated otherwise.

1.2. **CORRELATION, INTER-RELATIONSHIP, AND INTENT OF THE CONTRACT DOCUMENTS**

1.2.1. The intent of the Contract Documents is to include all items and all effort necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and inter-related, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2. Organization of the Specifications into divisions, sections and articles, and arrangement 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. It is the Contractor’s responsibility to control the Work under the Contract.

1.2.3. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3. **CAPITALIZATION**

Terms capitalized in these General Conditions include those which are: (1) specifically defined; and, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document.

1.4. **INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5. EXECUTION OF THE CONTRACT AND CONTRACT DOCUMENTS

1.5.1. The Contract shall be signed by the Owner and Contractor. Execution of the Contract by the Contractor constitutes the complete and irrevocable binding of the Contractor and his Surety to the Owner for complete performance of the Work and fulfillment of all obligations. By execution of the Contract, the Contractor acknowledges that it has reviewed and familiarized itself with all aspects of the Contract Documents and agrees to be bound by the terms and conditions contained therein.

1.5.2. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

1.5.3. The Contractor acknowledges that it has taken all reasonable actions necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, gas, electric power, phone service, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation, topography, and conditions of the ground; and, (5) the character of equipment and facilities needed for performance of the Work. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory geotechnical work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the action described and acknowledged in this paragraph will not relieve the Contractor from responsibility for properly ascertaining and estimating the difficulty and cost of successfully performing the Work or for proceeding to successfully perform the Work without additional expense to the Owner.

1.5.4. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner, nor does the Owner assume responsibility for any understanding reached or representation made by any of its officers, agents, or employees concerning conditions which can affect the Work unless that understanding or representation is expressly stated in the Contract Documents.

1.5.4.1. Performance of any portion of the Work, beyond that required for complying with the specifications and all other requirements of the Contract, shall be deemed to be for the convenience of the Contractor and shall be at the Contractor's sole expense.

1.5.4.2. There shall be no increase in the contract price or time allowed for performance which is for the convenience of the Contractor.

1.6. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER INSTRUMENTS OF SERVICE

1.6.1. The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect/Engineer or the Architect/Engineer's consultants. Unless otherwise indicated, the Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights except as defined in the Owner's Contract with the Architect/Engineer. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect/Engineer upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect/Engineer, and the Architect/Engineer's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect/Engineer's or Architect/Engineer's consultants' copyrights or other reserved rights.

1.6.2. Owner's Disclaimer of Warranty: The Owner has requested the Architect/Engineer prepare the Contract Documents for the Project which are adequate for bidding and constructing the Project. However, the Owner makes no representation, guarantee, or warranty of any nature whatsoever to the Contractor concerning such documents. The Contractor hereby acknowledges and represents that it has not, does not, and will not rely upon any such representation, guarantee, or warranty concerning the Contract Documents as no such representation, guarantee, or warranty have been or are hereby made.

ARTICLE 2 – THE OWNER

2.1. THE STATE OF MONTANA

2.1.1. The Owner is the State of Montana and is the sole entity to be identified as Owner in the Contract and as referred to throughout the Contract Documents as if singular in number.

2.1.2. Except as otherwise provided in Subparagraph 4.2.1, the Architect/Engineer does not have authority to bind the Owner. The observations and participations of the Owner or its

authorized representative do not alleviate any responsibility on the part of the Contractor. The Owner reserves the right to observe the work and make comment. Any action or lack of action by the Owner shall not be construed as approval of the Contractor's performance.

2.1.3. The Owner reserves the right to require the Contractor, all sub-contractors and material suppliers to provide lien releases at any time. The Owner reserves the right to withhold progress payments until such lien releases are received for all work for which prior progress payments have been made. Upon the Owner's demand for lien releases (either verbally or written), the Contractor, all sub-contractors and material suppliers shall provide such releases with every subsequent application for payment through Final Acceptance of the Project.

2.1.4. Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.1.5. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.1.6. Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Specifications as are reasonably necessary for execution of the Work.

2.2. OWNER'S RIGHT TO STOP WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The issuance of a stop work order by the Owner shall not give rise to a claim by the Contractor or any subcontractor for additional cost, time, or other adjustment.

2.3. OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may,

without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and increased costs, and compensation for the Architect/Engineer's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4. OWNER'S RIGHT TO PERSONNEL

2.4.1. The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly with the Contractor or indirectly through the Architect/Engineer. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruption to the facility or others, poor management, causes delay or delays, disruption of the Project, will not strictly adhere to facility procedures and Project requirements either knowingly or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

2.4.2. Any issue or circumstance relating to or resulting out of this clause shall not be construed or interpreted to be interference with or impacting upon the Contractor's responsibilities and liabilities under the Contract Documents.

2.4.3. Person(s) and/or personnel who do not perform in accordance with the Contract Documents, shall be deemed to have provided the Owner with cause to have such persons removed from any and all involvement in the Work.

2.4.4. The Contractor agrees to indemnify and hold harmless the Owner from any and all causes of action, demands, claims, damages, awards, attorneys' fees, and other costs brought against the Owner and/or Architect/Engineer by any and all person(s) or personnel as a result of actions under this clause.

ARTICLE 3 – THE CONTRACTOR

3.1. GENERAL

3.1.1. The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2. Construction Contractor Registration: The Contractor is required to be registered with the Department of Labor and Industry under 39-9-201 and 39-9-204 MCA prior to the Contract being

executed by the Owner. A bidder must demonstrate that it has registered or promises that it will register immediately upon notice of award and prior to the commencement of any work. If the prevailing bidder cannot or does not register in time for the Owner to execute the Contract within fifteen (15) days of the date on the notice of award, the Owner may award, at its sole discretion, to the next lowest responsible bidder who meets this requirement. The Owner will not execute a contract for construction nor issue a Notice to Proceed to a Contractor who is not registered per 39-9-401(a) MCA. It is solely the Contractor's responsibility to ensure that all Subcontractors are registered in accordance with Title 39, Chapter 9, MCA.

3.1.3. The Owner's engagement of the Contractor is based upon the Contractor's representations by submission of a bid to the Owner that it:

3.1.3.1. has the requisite skills, judgment, capacity, expertise, and financial ability to perform the Work;

3.1.3.2. is experienced in the type of labor and services the Owner is engaging the Contractor to perform;

3.1.3.3. is authorized, licensed and registered to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located;

3.1.3.4. is qualified, willing and able to perform the labor and services for the Project in the manner and scope defined in the Contract Documents; and,

3.1.3.5. has the expertise and ability to provide labor and services that will meet the Owner's objectives, intent and requirements, and will comply with the requirements of all governmental, public, and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

3.1.4. The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.5. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.1.6. Quality Control (i.e. ensuring compliance with the Contract Documents) and Quality Assurance (i.e. confirming compliance with the Contract Documents) are the responsibility of the Contractor. Testing, observations, and/or inspections performed or provided by the Owner are solely for the Owner's own purposes and are for the benefit of the Owner. The Owner is not liable or responsible in any form or fashion to the Contractor regarding quality assurance or extent of such assurances. The Contractor shall not, under any circumstances, rely upon the Owner's testing or inspections as a substitute or in lieu of its own Quality Control or Assurance programs.

3.2. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1. Since the Contract Documents are complementary and inter-related, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions affecting the Work. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. However, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect/Engineer as a request for information in such form as the Architect/Engineer may require.

3.2.2. Any errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect/Engineer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

3.2.3. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect/Engineer in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.4 and 4.3.5. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect/Engineer for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect/Engineer.

3.2.4. Except as otherwise expressly provided in this Contract, the Contractor assumes all risks, liabilities, costs, and consequences of performing any effort or work in accordance with any written or oral order (including but not limited to direction, instruction, interpretation, or determination) of a person not authorized in writing by the Owner to issue such an order.

3.2.5. By entering into this Contract, the Contractor acknowledges that it has informed itself fully regarding the requirements of the Drawings and Specifications, the General Conditions, the Supplementary General Conditions, all other documents comprising a part of the Contract Documents and all applicable laws, building codes, ordinances and regulations. Contractor hereby expressly acknowledges, guarantees, and warrants to the Owner that:

3.2.5.1. the Contract Documents are sufficient in detail and scope to enable Contractor to construct the finished project;

3.2.5.2. no additional or further work should be required by Owner at the time of Owner's acceptance of the Work; and,

3.2.5.3. when the Contractor's work is finished and the Owner accepts, the Work will be complete and fit for the purpose intended by the Contract Documents. This acknowledgment and guarantee does not imply that the Contractor is assuming responsibilities of the Architect/Engineer.

3.2.6. Sufficiency of Contract Documents: Prior to submission of its bid, and in all events prior to and upon signing the Contract, the Contractor certifies, warrants and guarantees that it has received, carefully reviewed, and evaluated all aspects of the Contract Documents and agrees that said Documents are adequate, consistent, coordinated, and sufficient for bidding and constructing the Work requested, intended, conceived, and contemplated therein.

3.2.6.1. The Contractor further acknowledges its continuing duty to review and evaluate the Contract Documents during the performance of its services and shall immediately notify the Architect/Engineer of any problems, conflicts, defects, deficiencies, inconsistencies, errors, or omissions it discovers in the Contract Documents and the Work to be constructed; and, any variances it discovers between the Contract Documents and applicable laws, statutes, building codes, rules or regulations.

3.2.6.2. If the Contractor performs any Work which it knows or should have known due to its experience, ability, qualifications, and expertise in the construction industry, that involves problems, conflicts, defects, deficiencies, inconsistencies, errors, or omissions in the Contract Documents and the Work to be constructed and, any variances between the Contract Documents and applicable laws, statutes, building codes, rules or regulations, without prior written notification to the Architect/Engineer and without prior authorization to proceed from the Architect/Engineer, the Contractor shall be responsible for and bare the costs and delays (including costs of any delay) of performing such Work and all corrective actions as directed by the Architect/Engineer.

3.2.6.3. Any and all claims resulting from the Contractor's failure, including those of any subcontractor or supplier, to carefully review, evaluate, and become familiar with all aspects of the Contract Documents shall be deemed void and waived by the Contractor.

3.2.7. Sufficiency of Site Conditions: Prior to submission of its bid, and in all events prior to and upon signing the Contract, the Contractor certifies, warrants and guarantees that it has visited, carefully reviewed, evaluated, and become familiar with all aspects of the site and local conditions at which the Project is to be constructed. The Contractor agrees that the Contract Documents are an adequate, consistent, coordinated, and sufficient representation of the site and local conditions for the Work.

3.2.7.1. The Contractor has reviewed and become familiar with all aspects with the Site Survey and Geotechnical Report for the Project and has a full understanding of the information provided therein.

3.2.7.2. If the Work involves modifications, renovations, or remodeling of an existing structure(s) or other man-made feature(s), the Contractor certifies, warrants and guarantees that it has reviewed, evaluated, and become familiar with all available as-built and record drawings, plans and specifications, and has thoroughly inspected and become familiar with the structure(s) or man-made feature(s).

3.2.7.3. Any and all claims resulting from the Contractor's failure, including those of any subcontractor or supplier, to visit, carefully review, evaluate, and become familiar with all

aspects of the site, available geotechnical information, and local conditions at which the Project is to be constructed shall be deemed void and waived by the Contractor.

3.3. SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1. The Contractor shall supervise and direct the Work using the Contractor's best skill and attention recognizing that time and quality are of the essence of the Work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. It is the responsibility of and incumbent upon the Contractor to ensure, confirm, coordinate, inspect and oversee all Work (which is inclusive of but not limited to all submittals, change orders, schedules, workmanship, and appropriate staffing with enough competent and qualified personnel) so that the Work is not impacted in terms of any delays, costs, damages, or additional time, or effort on the part Architect/Engineer or Owner. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect/Engineer and shall not proceed with that portion of the Work without further written instructions from the Architect/Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Architect/Engineer or Owner as appropriate shall be solely responsible for any resulting loss or damage. The Contractor will be required to: review any specified construction or installation procedure; advise the Architect/Engineer if the specified procedure deviates from good construction practice; to advise the Architect/Engineer if following the procedure will affect any warranties, including the Contractor's general warranty, or of any objections the Contractor may have to the procedure and shall propose any alternative procedure which the Contractor will warrant and guarantee. The Contractor is required to: review any specified construction or installation procedure; advise the Architect/Engineer if the specified procedure deviates from good construction practice; to advise the Architect/Engineer if following the procedure will affect any warranties, including the Contractor's general warranty, or of any objections the Contractor may have to the procedure and to propose any alternative procedure which the Contractor will warrant.

3.3.2. The Contractor shall furnish management, supervision, coordination, labor and services that: (1) expeditiously, economically, and properly completes the Work; (2) comply with all requirements of the Contract Documents; and, (3) are performed in a quality workmanlike manner and in accordance with the standards currently practiced by persons and entities performing or providing comparable management, supervision, labor and services on projects of similar size, complexity, cost, and nature to this Project. However, the standards currently practiced within the construction industry shall not relieve the Contractor of the responsibility to perform the Work to the level of quality, detail, and excellence defined and intended by the Contract Documents as interpreted by the Architect/Engineer.

3.3.3. All services and labor rendered by the Contractor, including any subcontractors or suppliers, shall be performed under the immediate supervision at the site of persons possessing expertise and the requisite knowledge in the discipline or trade of service being rendered. The Contractor shall maintain such supervision and personnel at all times that the Contractor's personnel, subcontractors, and/or suppliers are at the site. The Contractor shall never be absent from the site during performance of any portion of the Work by any entity under the supervision

and direction of the Contractor. Full time attendance by the Contractor from Notice to Proceed through Final Acceptance is an explicit requirement of this Contract.

3.3.4. The Contractor shall be responsible to the Owner for acts, damages, errors, and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.5. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4. LABOR, WAGES, AND MATERIALS

3.4.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, permits, licenses, goods, products, equipment, tools, construction equipment and machinery, water, heat, all utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work in accordance with the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2. The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect/Engineer and in accordance with a Change Order. This opportunity to request substitutions does not negate or waive any requirement for the Contractor to follow a pre-bidding "prior approval" requirement nor obligate the Owner to approve any substitution request.

3.4.3. The Contractor shall enforce strict discipline, appropriate behavior, and good order among the Contractor's employees, subcontractors at every tier and level, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.4. Prevailing Wages and Montana Residents.

3.4.4.1. The Contractor and all subcontractors at any level or tier of the Work shall give preference to the employment of bona fide Montana residents in the performance of the Work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, MCA)

3.4.4.2. At least 50% of the workers, as defined by the Department of Labor & Industry (DOLI), must be bona fide Montana residents. (18-2-401, 18-2-402, MCA)

3.4.4.3. Indian Employment Preference within the Boundaries of an Indian Reservation. All contractors that are awarded a state agency construction contract within the exterior boundaries of an Indian Reservation shall extend a hiring preference to qualified Indians as provided herein:

3.4.4.3.1. "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this State. "Indian" means a person who is enrolled or who is a lineal descendent of a person enrolled in an enrollment listing of the Bureau of Indian Affairs or in the enrollment listing of a recognized Indian tribe domiciled in the United States.

3.4.4.3.2. Qualified Indians – Employment Criteria: An Indian shall be qualified for employment in a permanent, temporary, or seasonal position if he or she has substantially equal qualifications for any position and resides on the reservation where the construction contract is to be performed.

3.4.4.3.3. Non-Applicability: The Indian Employment Preference Policy does not apply to a project partially funded with federal-aid money from the United States Department of Transportation or when residency preference laws are specifically prohibited by federal law. It does not apply to independent contractors and their employees, student interns, elected officials, or appointed positions.

3.4.4.4. The Commissioner of The Montana Department of Labor and Industry (DOLI) has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA. A copy of the Rates entitled "State of Montana, Prevailing Wage Rates" are bound herein. The Commissioner of the Montana DOLI has established the resident requirements in accordance with 18-2-409, MCA. The Contractor and all subcontractors at any level or tier of the Work shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the Work to DOLI.

3.4.4.5. The Contractor and all subcontractors at any tier or level of the Work, and as determined by the Montana DOLI, shall classify all workers in the project in accordance with the State of Montana, Prevailing Wage Rates. In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact DOLI for a determination of the classification and the prevailing wage rate to be paid.

3.4.4.6. The Contractor and all subcontractors at any tier or level of the Work shall be responsible for obtaining wage rates for all workers prior to their performing any work on the project. The Contractor is required to pay and insure that its subcontractors at any tier or level and others also pay the prevailing wage determined by the DOLI, insofar as required by Title 18 of the MCA and the pertinent rules and standards of DOLI.

3.4.4.7. It is not the responsibility of the Owner to determine who classifies as a subcontractor, sub-subcontractor, material man, supplier, or any other person involved in any aspect of the Work at any tier or level. All such determinations shall be the sole responsibility of the Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project at any tier or level. The Contractor, subcontractors, sub-subcontractors, material men, suppliers and others involved in the project shall indemnify and hold harmless the Owner from all claims, attorneys' fees, damages and/or awards involving prevailing wage or Montana resident issues. Any changes to wages or penalties for failure to pay the correct wages will be the sole responsibility of the Contractor and/or his subcontractors and no further charges or claims shall be made to the Owner. If the parties mutually agree or an arbitrator or court determines that any change in wages is due and any part is attributable to the Owner, the Owner's sole liability shall be for the amount of wages

ordered only and not for other expenses, charges, penalties, overhead, profit or other mark-ups.

3.4.4.8. In accordance with 18-2-422(1) MCA, each job classification's standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project is included herein by both reference to DOLI's "Building" or "Heavy/Highway" schedules and as part of these Contract Documents.

3.4.4.9. The Contractor and every employer, including all subcontractors at any tier or level, is required by 18-2-422(2) MCA to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for a period of not less than 3 years after the contractor's, subcontractor's, or employer's completion of work on the project or the Final Acceptance by the Owner, whichever is later.

3.4.4.10. Each contractor is required by 18-2-422(3) MCA to post in a visible and accessible location a statement of all wages and fringe benefits in compliance with 18-2-423.

3.5. WARRANTY AND GUARANTEE

3.5.1. The Contractor warrants to the Owner and Architect/Engineer that materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and rejected. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2. The Contractor shall and does hereby warrant and guarantee all work, workmanship, and materials for the full warranty period as specified in the Contract Documents. The warranty period shall be defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project by the Owner. The date of Final Acceptance shall be the date of the Architect/Engineer's signature on the final request for payment unless otherwise agreed upon in writing for the entire project or any portion thereof, by the Owner, Architect/Engineer and Contractor.

3.5.3. Manufacturer and product warranties and guarantees, as provided by the manufacturer or as specified in the Contract Documents, are in addition to the Contractor's warranty.

3.6. TAXES

3.6.1. The Contractor is responsible for and shall pay all sales, consumer, use, and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6.2. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due and sent to the Montana Department of Revenue. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by the Contractor and sent to the Montana Department of Revenue. The Contractor shall notify the Department of Revenue on the Department's prescribed form.

3.7. PERMITS, FEES, AND NOTICES

3.7.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract, including but not limited to, the building permit fee, electrical, plumbing, sewer connection fee and mechanical permit fee, and any required impact fees and which are legally required when bids are received or negotiations concluded.

3.7.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, and does so without providing notice to the Architect/Engineer and Owner, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction. The Contractor shall be solely responsible to insure that all work it performs is in full compliance with all prevailing and applicable codes and regulations.

3.7.4. Incident Reporting: The Contractor shall immediately notify the Owner and Architect/Engineer, both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work, including, but not limited to, union disputes, accidents, delays, damages to Work, and other significant occurrences. Such notices are in addition to any other notices required regarding claims.

3.8. ALLOWANCES

3.8.1. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

3.8.2. Unless otherwise provided in the Contract Documents:

3.8.2.1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

3.8.2.2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included by the Contractor in the Contract Sum but not in the allowances;

3.8.2.3. whenever costs are more than or less than stated allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect: (1) the difference between actual costs and the allowances under Clause 3.8.2.1; and, (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3. Materials and equipment under an allowance shall be selected by the Owner.

3.9. CONTRACTOR'S PERSONNEL

3.9.1. The Contractor shall employ competent personnel, supervisors, project managers, project engineers, project superintendent, and all others who shall be assigned to the Work throughout its duration. Contractor's personnel extend to those employed by the Contractor whether at the site or not. The Owner shall have right to review and approve or reject all replacement of Contractor's personnel. All personnel assigned by the Contractor to the Work shall possess the requisite experience, skills, abilities, knowledge, and integrity to perform the Work.

3.9.2. The superintendent and others as assigned shall be in attendance at the Project site during the performance of any and all Work. The superintendent shall represent the Contractor. All communications given to the Contractor's personnel such as the project manager or the superintendent, whether verbal, electronic or written, shall be as binding as if given to the Contractor.

3.9.3. It is the Contractor's responsibility to appropriately staff, manage, supervise and direct the Work which is inclusive of the performance, acts, and actions of his personnel and subcontractors. As such, the Contractor further agrees to indemnify and hold harmless the Owner and the Architect/Engineer, and to protect and defend both from and against all claims, attorneys' fees, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of or against the Owner, Architect/Engineer, Contractor, their agents, employees, or any third parties on account of the performance, behavior, acts or actions of the Contractor's personnel or subcontractors.

3.9.4. Prior to the commencement of any work, the Contractor shall prepare and submit a personnel listing and organizational chart in a format acceptable to the Owner which lists by name, phone number (including cell phone), job category, and responsibility the Contractor's key/primary personnel who will work on the Project. The Contractor shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name and qualifications of any proposed replacements. The Owner shall have the right to reject any proposed replacements without cost or claim being made by the Contractor. The chart shall be provided to the Owner at the time of the pre-construction conference.

3.9.5. The Contractor shall immediately remove for the duration of the Project, any person making an inappropriate racial, sexual, or ethnic comment, statement, joke, or gesture toward any other individual.

3.9.6. The Contractor shall immediately remove for the duration of the Project, any person who is incompetent, careless, disruptive, or not working in harmony with others.

3.10. CONSTRUCTION SCHEDULES

3.10.1. The Contractor shall, promptly after being awarded the Contract, prepare and submit for the Owner's and Architect/Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and per the requirements of the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor's schedule shall be in the "Critical Path Method" and shall show the Critical Path of the Work in sufficient detail to evaluate the Contractor's progress. A request for time extension by the Contractor will not be allowed unless a change in the Work is approved by the Owner and materially affects the Critical Path. It is the Contractor's responsibility to demonstrate that any time extensions requests materially affect the Critical Path.

3.10.2. The Contractor shall prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Architect/Engineer reasonable time to review submittals.

3.10.3. The Contractor shall perform the Work in accordance with the most recent schedule submitted to the Owner and Architect/Engineer.

3.10.4. The Contractor's operations (including but not limited to the Contractor's forces employed, sequences of operations, and methods of operation) at all times during the performance of the contract shall be: (a) subject to the review of the Owner or the Architect/Engineer; and, (b) sufficient to insure the completion of the Work within the specified performance period.

3.10.5. The Critical Path Method Construction Schedule prepared by the Contractor must be in a form that is acceptable to both the Architect/Engineer and the Owner.

3.10.5.1. The Schedule shall show the estimated progress of the entire Project through the individual time periods allowed for completion of each discipline, trade, phase, section, and aspect of the Work. The Contractor shall provide written reports of all logic and resource loading data with the Schedule and with all updates to the Schedule.

3.10.5.2. The Schedule shall show percent complete, progress to date, project work, and projected time to complete the work for all activities. The percent complete and minor schedule changes, including additions of activities, change orders, construction change directives, changes to sequences of activities and significant changes in activity demands must be shown by a revised Schedule. A written report providing details about the changes and what actions are anticipated to get the work completed in the contractual time period shall be submitted with the revised schedule.

3.10.5.3. The Construction Schedule shall include coordinate dates for performance of all divisions of the Work, including shipping and delivery, off-site requirements and tasks, so the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Acceptance.

3.10.5.4. The Construction Schedule shall include: (i) the required commencement date, the required dates of Substantial Completion(s) and Final Acceptance for the complete Project and all phases (if any); (ii) any guideline and milestone dates required by the Owner or the Contract Documents; (iii) subcontractor and supplier schedules; (iv) a submittal schedule which allows sufficient time for review and action by the Architect/Engineer; (v) the complete sequence of all construction activities with start and completion dates; and, (vi) required decision dates.

3.10.5.5. By receiving, reviewing, and/or commenting on the Construction Schedule or any portion thereof (including logic and resource loading), neither the Owner or Architect/Engineer assume any of the Contractor's responsibility or liability that the Schedule be coordinated or complete, or for timely and orderly completion of the Work.

3.10.5.6. Receiving, reviewing, and/or commenting on the Schedule, any portion thereof, or any revision thereof, does not constitute an approval, acknowledgement, or acceptance of any durations, dates, milestones, or performance indicated therein.

3.10.5.7. A printout of the Schedule's logic showing all activities and all resource loading is required with the Schedule and with all updates to the Schedule.

3.10.6. The Contractor shall review and compare, at a minimum on a weekly basis, the actual status of the Work against its Construction Schedule.

3.10.7. The Contractor shall routinely, frequently, and periodically (but not less than monthly) update and/or revise its Construction Schedule to show actual progress of the Work through the date of the update or revision, projected level of completion of each remaining activity, activities modified since the previous update or revision, and major changes in scope or logic. The updated/revised Schedule shall be accompanied by a narrative report which: (1) states and explains any modifications of the critical path, if any, including any changes in logic; (2) defines problem areas and lists areas of anticipated delays; (3) explains the anticipated impact the change in the critical path or problems and delays will have on the entire Schedule and the completion of the Work; (4) provides corrective action taken or proposed; and, (5) states how problems or delays will be resolved in order to deliver the Work by the required phasing milestones (if any), Substantial Completion(s), and Final Acceptance dates.

3.10.8. Delay in Performance: If at any time the Contractor anticipates that performance of the Work will be delayed or has been delayed, the Contractor shall: (1) immediately notify the Architect/Engineer by separate and distinct correspondence of the probable cause and effect of the delay, and possible alternatives to minimize the delay; and, (2) take all corrective action reasonably necessary to deliver the Work by the required dates. Nothing in this paragraph or the Contract Documents shall be construed by the Contractor as a granting by the Architect/Engineer or Owner of constructive acceleration. The results of failure to anticipate delays, or to timely notify the Owner and Architect/Engineer of an anticipated or real delay, are entirely the responsibility of the Contractor whether compensable or not.

3.10.9. Early Completion: The Contractor may attempt to achieve Substantial Completion(s) on or before the date(s) required in the Contract. However, such early completion shall be for the Contractor's sole convenience and shall not create any real or implied additional rights to Contractor or impose any additional obligations on the Owner or Architect/Engineer. The Owner will not be liable for nor pay any additional compensation of any kind to the Contractor for achieving Substantial Completion(s) or Final Acceptance prior to the required dates as set forth in the Contract. The Owner will not be liable for nor pay any additional compensation of any kind should there be by any cause whatsoever that the Contractor is not able to achieve Substantial Completion(s) earlier than the contractually required dates of Substantial Completion(s) or Final Acceptance.

3.10.10. Float in Schedule. Any and all float time in the Contractor's schedule, regardless of the path or activity, shall accrue to the benefit of the Owner and the Work, and not to the Contractor. Float also includes any difference shown between any early completion dates shown on the Contractor's Schedule for any phasing milestone(s), Substantial Completion(s) or Final Acceptance and the dates or durations as required by the Contract Documents.

3.10.11. Modification of Required Substantial Completion(s) or Final Acceptance Dates: Modification of the required dates shall be accomplished only by duly authorized, accepted, and approved change orders stating the new date(s) with specificity on the change order form. All rights, duties, and obligations, including but not limited to the Contractor's liability for actual, delay, and/or liquidated damages, shall be determined in relation to the date(s) as modified.

3.11. DOCUMENTATION AND AS-BUILT CONDITIONS AT THE SITE

3.11.1. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and accurately marked to record current field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect/Engineer or Owner at any time and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

3.11.2. The Owner shall not be required to process final payment until all documentation and data required by the Contract Documents is submitted to and approved by the Architect/Engineer including, but not limited to, the As-Built Drawings. The Owner will not process any final request for payment until the Architect/Engineer has received and verified that the Contractor has performed the requirements pertaining to the as-built drawings.

3.11.3. The as-built drawings shall be neatly and clearly marked during construction to record all deviations, variations, changes, and alterations as they occur during construction along with such supplementary notes and details necessary to clearly and accurately represent the as-built condition. The as-built drawings shall be available at all times to the Owner, Architect/Engineer and Architect/Engineer's consultants.

3.12. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1. Definitions:

3.12.1.1. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.1.2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

3.12.2. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

3.12.3. The Contractor shall review, approve, and submit to the Architect/Engineer, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents within sixty (60) calendar days of being issued the Notice To Proceed unless noted otherwise and shall do so in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Any and all items submitted by the Contractor which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor, or in the opinion of the Architect/Engineer, have not been reviewed for compliance by the Contractor even if marked as such, may be returned by the Architect/Engineer without action and shall not result in any accusation or claim for delay or cost by the Contractor. Any submittal that, in the opinion of the Architect/Engineer, is incomplete in any area or detail may be rejected and returned to the Contractor. It is the responsibility of and incumbent upon the Contractor to ensure and confirm that all submittals are complete, accurate, and in conformance to the Contract Documents prior to submission.

3.12.4. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents and guarantees to the Architect/Engineer and Owner that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.5. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer. Should the Contractor, Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

3.12.6. The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and: (1) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work; or, (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's approval thereof.

3.12.7. The Contractor shall direct specific attention, in writing or on re-submitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice the Architect/Engineer's approval of a re-submission shall not apply to such revisions.

3.12.8. The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect/Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect/Engineer. The Owner and the Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect/Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this subparagraph, the Architect/Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents but shall be responsible and held liable for review and verification of all performance or design criteria as required by Paragraph 3.2.

3.12.9. Unless noted otherwise in the Contract Documents, the Contractor shall submit to the Architect/Engineer within sixty (60) days from the date of the Notice To Proceed a minimum of six (6) complete copies of all shop/setting drawings, schedules, cut sheets, products, product data, and samples required for the complete Work. Copies shall be reviewed, marked, stamped and approved on each and every copy by the Contractor prior to submission to the Architect/Engineer or they shall be returned without review or action. The Architect/Engineer shall review with reasonable promptness, making corrections, rejections, or other actions as appropriate. The Architect/Engineer's approval or actions on shop/setting drawings, schedules, cut sheets, products, product data, or samples shall not relieve the Contractor from responsibility for, nor deviating from, the requirements of the plans and specifications. Any deviations from the plans and specifications requested or made by the Contractor shall be brought promptly to the attention of the Architect/Engineer.

3.12.10. Cost for Re-Submissions: the Contractor is responsible for ensuring that all shop drawings, product data, samples, and submittals contain all information required by the Contract Documents to allow the Architect/Engineer to take action. The Contractor shall pay the Architect/Engineer's cost for any re-submission of any rejected item. Such costs shall be deducted from the contract sum by Change Order. The Contractor agrees that any action taken by the Architect/Engineer is solely in the Architect/Engineer's discretion and is non-negotiable for the purposes of the Architect/Engineer's cost recovery for multiple (i.e. more than one) review.

3.13. USE OF SITE

3.13.1. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2. The Contractor shall not damage, endanger, compromise or destroy any part of the Project or the site, including but not limited to work performed by others, monuments, stakes, bench marks, survey points, utilities, existing features or structures. The Contractor shall be fully and exclusively responsible for and bear all costs and delays (including and costs of delay) for any damage, endangerment, compromise, or destruction of any part of the Project or site.

3.14. CUTTING AND PATCHING

3.14.1. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15. CLEAN UP AND SITE CONTROL

3.15.1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract during performance of the Work and at the direction of the Owner or Architect/Engineer. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16. ACCESS TO WORK

3.16.1. The Contractor shall provide the Owner and Architect/Engineer access to the Work at all times wherever located.

3.17. ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect/Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect/Engineer.

3.18. INDEMNIFICATION

3.18.1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. The Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and the Owner against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys' fees), and losses from any cause whatever (including patent, trademark and copyright infringement) except those involving the Owner's sole negligence. This includes any suits, claims, actions, losses, costs, damages of any kind, including the State and Owner's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of the Owner if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Contractor in whole or in part.

3.18.2. In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

4.1. THE ARCHITECT/ENGINEER

4.1.1. The Architect/Engineer is the person lawfully licensed to practice or an entity lawfully practicing identified as such in the Agreement with the Owner and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer's duly authorized representative.

4.1.2. Duties, responsibilities and limitations of authority of the Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

4.1.3. If the employment of the Architect/Engineer is terminated, the Owner shall employ a new Architect/Engineer at the sole choice and discretion of the Owner, whose status under the Contract Documents shall be that of the former Architect/Engineer.

4.2. ARCHITECT/ENGINEER'S ADMINISTRATION OF THE CONSTRUCTION CONTRACT

4.2.1. The Architect/Engineer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative throughout the complete duration of the Project, including the warranty period. The Architect/Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with the Architect/Engineer Contract.

4.2.2. The Architect/Engineer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations to: (1) become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (2) endeavor to guard the Owner against defects and deficiencies in the Work; and, (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner and Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's Work. The Owner and Architect/Engineer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, for the safety of any person involved in the work, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

4.2.3. The Architect/Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect/Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4. Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect/Engineer about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the

Contractor to the Architect/Engineer. Communications by and with separate contractors shall be through the Owner to the Architect/Engineer.

4.2.5. Based on the Architect/Engineer's evaluations of the Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Contractor is fully aware that the Owner (i.e. the State of Montana) has established a billing cycle for processing payments in Article 9 of these General Conditions. The Contractor and all Subcontractors are subject to all provisions of Title 28, Chapter 2, Part 21 MCA regarding all aspects of the Work.

4.2.6. The Architect/Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable, the Architect/Engineer will have authority to require inspection or testing of the Work in accordance with the General Conditions and any applicable technical specification requirements, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect/Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7. The Architect/Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8. The Architect/Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9. The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion(s) and the date of Final Acceptance, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10. If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more project representatives to assist in carrying out the Architect/Engineer's responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in the Owner's Agreement with the Architect/Engineer.

4.2.11. The Architect/Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect/Engineer shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect/Engineer to furnish such interpretations until 15 days after written request is made for them.

4.2.12. Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect/Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will render such interpretations and decisions in good faith.

4.2.13. The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.2.14. The Architect/Engineer's or Owner's observations or inspections do not alleviate any responsibility on the part of the Contractor. The Architect/Engineer and the Owner reserves the right to observe and inspect the work and make comment. Action or lack of action following observation or inspection is not to be construed as approval of Contractor's performance.

4.3. CLAIMS AND DISPUTES

4.3.1. Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extensions of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes, controversies, and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest solely with the party making the Claim.

4.3.1.1. Time Limits on Claims. Claims by either party must be initiated within 21 calendar days after occurrence of the event giving rise to such claim. The following shall apply to the initiation of a claim:

4.3.1.1.1. A written notice of a claim must be provided to the Architect/Engineer and the other party within 21 calendar days after the occurrence of the event or the claim is waived by the claiming party and void in its entirety.

4.3.1.1.2. Claims must be initiated by separate, clear, and distinct written notice within the 21 calendar day time frame to the Architect/Engineer and the other party and must contain the notarized statement in Sub-Paragraph 4.3.1.5 when the claim is made by the Contractor. Discussions in any form with the Architect/Engineer or Owner, whether at the site or not, do not constitute initiation of a claim. Notes in project meeting minutes, email correspondence, change order proposals, or any other form of documentation does not

constitute initiation of a claim. The written notice must be a separate and distinct correspondence provided in hardcopy to both the Architect/Engineer and Owner and must delineate the specific event and outline the causes and reasons for the claim whether or not cost or time have been fully determined. Written remarks or notes of a generic nature are invalid in their entirety. Comments made at progress meetings, project site visits, inspections, emails, voice mails, and other such communications do not meet the requirement of providing notice of claim.

4.3.1.1.3. Physical Injury or Physical Damage. Should the Owner or Contractor suffer physical injury or physical damage to person or property because of any error, omission, or act of the other party or others for whose acts the other party is legally and contractually liable, claim will be made in writing to the other party within a reasonable time of the first observance of such physical injury or physical damage but in no case beyond 30 calendar days of the first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose. In all such cases, the indemnification provisions of the Contract shall be effectual and the Contractor's insurance shall be primary and in full effect.

4.3.1.2. All Claims must contain sufficient justification and substantiation with the written notice or they may be rejected without consideration by the Architect/Engineer or other party with no additional impact or consequence to the Contract Sum, Contract Time, or matter(s) in question in the Claim.

4.3.1.3. If additional compensation is claimed, the exact amount claimed and a breakdown of that amount into the following categories shall be provided with each and every claim:

4.3.1.3.1. Direct costs (as listed in Subparagraph 7.3.9.1 through 7.3.9.5);

4.3.1.3.2. Indirect costs (as defined in Paragraph 7.2.5); and,

4.3.1.3.3. Consequential items (i.e. time extensions, credits, logic, reasonableness, impacts, disruptions, dilution) for the change.

4.3.1.4. If additional time is claimed the following shall be provided with each and every claim:

4.3.1.4.1. The specific number of days and specific dates for which the additional time is sought;

4.3.1.4.2. The specific reasons, causes, and/or effects whereby the Contractor believes that additional time should be granted; and,

4.3.1.4.3. The Contractor shall provide analyses, documentation, and justification of its claim for additional time in accordance with the latest Critical Path Method schedule in use at the time of event giving rise to the claim.

4.3.1.5. With each and every claim, the Contractor shall submit to the Architect/Engineer and Owner a notarized statement containing the following language:

“Under penalty of law (including perjury and/or false/fraudulent claims against the State), the undersigned,

(Name) (Title)
Of _____
(Company) (Date)

hereby certifies, warrants, and guarantees that this claim made for Work on this Contract is a true statement of the costs, adjustments and/or time sought and is fully documented and supported under the contract between the parties.

(Signature) (Date)”

4.3.2. Continuing Contract Performance.

Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents on the portion of the Work not involved in a Claim.

4.3.3. Claims for Cost or Time for Concealed or Unknown Conditions.

If conditions are encountered at the site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents; or, (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily

found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed.

4.3.3.1. The Architect/Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect/Engineer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the date of the Architect/Engineer's decision.

4.3.3.2. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect/Engineer for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.3.3. Nothing in this paragraph shall relieve the Contractor of its obligation to adequately and sufficiently investigate, research, and examine the site, the site survey, topographical information, and the geotechnical information available whether included by reference or fully incorporated in the Contract Documents.

4.3.4. Claims for Additional Cost.

4.3.4.1. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.4.2. If the Contractor believes additional cost is involved for reasons including but not limited to: (1) a written interpretation from the Architect/Engineer; (2) an order by the Owner to stop the Work solely for the Owner's convenience or where the Contractor was not at least partially at fault; (3) a written order for a minor change in the Work issued by the Architect/Engineer; (4) failure of payment by the Owner per the terms of the Contract; (5) termination of the Contract by the Owner; or, (6) other reasonable grounds, Claim must be filed in accordance with this Paragraph 4.3.

4.3.5. Claims for Additional Time

4.3.5.1. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as specified in these General Conditions shall be provided along with the notarized certification. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay for the

same event or cause only one Claim is necessary. However, separate and distinct written notice is required for each separate event.

4.3.5.2. Weather Delays:

4.3.5.2.1. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction activities.

4.3.5.2.2. Inclement or adverse weather shall not be a prima facie reason for the granting of an extension of time, and the Contractor shall make every effort to continue work under prevailing conditions. The Owner may grant an extension of time if an unavoidable delay occurs as a result of inclement/severe/adverse weather and such shall then be classified as a "Delay Day". Any and all delay days granted by the Owner are and shall be non-compensable in any manner or form. The Contractor shall comply with the notice requirements concerning instances of inclement/severe/adverse weather before the Owner will consider a time extension. Each day of inclement/severe/adverse weather shall be considered a separate instance or event and as such, shall be subject to the notice requirements.

4.3.5.2.3. An "inclement", "severe", or "adverse" weather delay day is defined as a day on which the Contractor is prevented by weather or conditions caused by weather resulting immediately there from, which directly impact the current controlling critical-path operation or operations, and which prevent the Contractor from proceeding with at least 75% of the normal labor and equipment force engaged on such critical path operation or operations for at least 60% of the total daily time being currently spent on the controlling operation or operations.

4.3.5.2.4. The Contractor shall consider normal/typical/seasonal weather days and conditions caused by normal/typical/seasonal weather days for the location of the Work in the planning and scheduling of the Work to ensure completion within the Contract Time. No time extensions will be granted for the Contractor's failure to consider and account for such weather days and conditions caused by such weather for the Contract Time in which the Work is to be accomplished.

4.3.5.2.5. A "normal", "typical", or "seasonal" weather day shall be defined as weather that can be reasonably anticipated to occur at the location of the Work for each particular month involved in the Contract Time. Each month involved shall not be considered individually as it relates to claims for additional time due to inclement/adverse/severe weather but shall consider the entire Contract Time as it compares to normal/typical/seasonal weather that is reasonably anticipated to occur. Normal/typical/seasonal weather days shall be based upon U.S. National Weather Service climatic data for the location of the Work or the nearest location where such data is available.

4.3.5.2.6. The Contractor is solely responsible to document, prepare and present all data and justification for claiming a weather delay day. Any and all claims for weather delay days shall be tied directly to the current critical-path operation or operations on the

day of the instance or event which shall be delineated and described on the Critical-Path Schedule and shall be provided with any and all claims. The Contractor is solely responsible to indicate and document why the weather delay day(s) claimed are beyond those weather days which are reasonably anticipated to occur for the Contract Time. Incomplete or inaccurate claims, as determined by the Architect/Engineer or Owner, may be returned without consideration or comment.

4.3.5.3. Where the Contractor is prevented from completing any part of the Work with specified durations or phases due to delay beyond the control of both the Owner and the Contractor, an extension of the contract time or phase duration in an equal amount to the time lost due to such delay shall be the Contractor's sole and exclusive remedy for such delay.

4.3.5.4. Delays attributable to and/or within the control of subcontractors and suppliers are deemed to be within the control of the Contractor.

4.3.5.5. In no event shall the Owner be liable to the Contractor, any subcontractor, any supplier, Contractor's surety, or any other person or organization, for damages or costs arising out of or resulting from: (1) delays caused by or within the control of the Contractor which include but are not limited to labor issues or labor strikes on the Project, federal, state, or local jurisdiction enforcement actions related directly to the Contractor's Work (e.g. safety or code violations, etc.); or, (2) delays beyond the control of both parties including but not limited to fires, floods, earthquakes, abnormal weather conditions, acts of God, nationwide material shortages, actions or inaction by utility owners, emergency declarations by federal, state, or local officials enacted in the immediate vicinity of the project, or other contractors performing work for the Owner.

4.3.6. Claims for Consequential Damages

4.3.6.1. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

4.3.6.1.1. damages incurred by the Owner for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and,

4.3.6.1.2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, income, and for loss of profit.

4.3.6.2. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this waiver of consequential damages shall be deemed to preclude an award of liquidated or actual damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4. RESOLUTION OF CLAIMS, DISPUTES, AND CONTROVERSIES

4.4.1. Decision of Architect/Engineer. Claims, including those alleging an error or omission by the Architect/Engineer, shall be referred initially to the Architect/Engineer for decision. A decision by the Architect/Engineer shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date of Final Acceptance, unless 30 days have passed after the Claim has been referred to the Architect/Engineer with no decision having been rendered by the Architect/Engineer. The Architect/Engineer will not decide disputes between the Contractor and persons or entities other than the Owner. Any Claim arising out of or related to the Contract, except those already waived in Subparagraphs 4.3.6, 7.2.6, 7.3.8, 9.10.4 and 9.10.5 shall, pending compliance with Subparagraph 4.4.5, be subject to mediation, arbitration, or the institution of legal or equitable proceedings. Claims waived in Subparagraphs 4.3.6, 7.2.6, 7.3.8, 9.10.4, and 9.10.5 are deemed settled, resolved, and completed.

4.4.2. The Architect/Engineer will review Claims and within ten (10) days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise; or (5) advise the parties that the Architect/Engineer is unable to resolve the Claim if the Architect/Engineer lacks sufficient information to evaluate the merits of the Claim or if the Architect/Engineer concludes that, in the Architect/Engineer's sole discretion, it would be inappropriate for the Architect/Engineer to resolve the Claim.

4.4.3. If the Architect/Engineer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond within ten (10) days after receipt of such request and shall either provide a response on the requested supporting data, advise the Architect/Engineer when the response or supporting data will be furnished, or advise the Architect/Engineer that no supporting data will be furnished. Upon either no response or receipt of the response or supporting data, the Architect/Engineer will either reject or approve the Claim in whole or in part.

4.4.4. The Architect/Engineer will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect/Engineer shall be final and binding on the parties but subject to mediation and arbitration.

4.4.5. When 30 days have passed upon submission of a Claim without decision or action by the Architect/Engineer, or the Architect/Engineer has rendered a decision or taken any of the actions identified in Subparagraph 4.4.2, a demand for arbitration of a Claim covered by such decision or action must be made within 30 days after the date of expiration of Subparagraph 4.4.1 or within 30 days of the Architect/Engineer's decision or action. Failure to demand arbitration within said 30 day period shall result in the Architect/Engineer's decision becoming final and binding upon the Owner and Contractor whenever such decision is rendered.

4.4.6. If the Architect/Engineer renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.4.7. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect/Engineer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect/Engineer or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.8. A Claim subject to or related to liens or bonds shall be governed by applicable law regarding notices, filing deadlines, and resolution of such Claim prior to any resolution of such Claim by the Architect/Engineer, by mediation, or by arbitration, except for claims made by the Owner against the Contractor's bonds.

4.5. MEDIATION

4.5.1. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.6, 7.2.6, 7.3.8, 9.10.4 and 9.10.5 shall, after initial decision by the Architect/Engineer or 30 days after submission of the Claim to the Architect/Engineer, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect and/or those rules specified in the contract documents or separately agreed upon between the parties. Construction Industry Mediation Rule M-2 (filing with AAA) is void. The parties shall mutually agree upon a mediator who shall then take the place of AAA in the Construction Industry Mediation Rules. The parties must mutually agree to use AAA and no filing of a request for mediation shall be made to AAA by either party until such mutual agreement has been made. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.5.3. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.6. ARBITRATION

4.6.1. Any controversy or Claim arising out of or related to this Contract or the breach thereof shall be settled by arbitration in accordance with the Montana Uniform Arbitration Act (MUAA). To the extent it does not conflict with the MUAA, the Construction Industry Arbitration Rules of the American Arbitration Association shall apply except as modified herein. The parties to the arbitration shall bear their own costs and expenses for participating in the arbitration. Costs of the Arbitration panel shall be borne equally between the parties except those costs awarded by the Arbitration panel (including costs for the arbitration itself).

4.6.2. Prior to the arbitration hearing all parties to the arbitration may conduct discovery subject to the provisions of Montana Rules of Civil Procedure. The arbitration panel may award actual damages incurred if a party fails to provide full disclosure under any discovery request. If a party claims a right of information privilege protected by law, the party must submit that claim to the arbitration panel for a ruling, before failing to provide information requested under discovery or the arbitration panel may award actual damages.

4.6.3. The venue for all arbitration proceedings required by this Contract shall be the seat of the county in which the work occurs or the First Judicial District, Lewis and Clark County, as determined solely by the Owner. Arbitration shall be conducted by a panel comprised of three members with one selected by the Contractor, one selected by the Owner, and one selected by mutual agreement of the Owner and the Contractor.

4.6.4. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.6, 7.2.6, 7.3.8, 9.10.4 and 9.10.5, shall, after decision or action by the Architect/Engineer or 30 days after submission of the Claim to the Architect/Engineer, be subject to arbitration provided a demand for arbitration is made within the time frame provided in Subparagraph 4.4.5. If such demand is not made with the specified time frame, the Architect/Engineer's decision or action is final. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.5. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect and/or those rules specified in the Contract Documents or separately agreed upon between the parties. Construction Industry Arbitration Rule R-3 (filing with AAA) is void. The parties shall mutually agree upon an arbitrator or arbitrators who shall then take the place of AAA in the Construction Industry Arbitration Rules. The parties must mutually agree to use AAA and no filing of a demand for arbitration shall be made to AAA by either party until such mutual agreement has been made. The demand for arbitration shall be filed in writing with the other party to the Contract and a copy shall be filed with the Architect/Engineer.

4.6.6. A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.5 and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.7. Pending final resolution of a Claim including arbitration, unless otherwise mutually agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract on Work or amounts not in dispute.

4.6.8. Limitation on Consolidation or Joinder. Arbitration arising out of or relating to the Contract may include by consolidation or joinder the Architect/Engineer, the Architect/Engineer's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect/Engineer, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Architect/Engineer, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or

law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Architect/Engineer, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.6.9. Claims and Timely Assertion of Claims. The party filing a demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.10. Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties agree that the costs of the arbitrator(s) compensation and expenses shall be borne equally. The parties further agree that the arbitrator(s) shall have authority to award to either party some or all of the costs and expenses involved, including attorney's fees.

ARTICLE 5 – SUBCONTRACTORS

5.1. DEFINITIONS

5.1.1. A Subcontractor is a person or entity who has a direct or indirect contract at any tier or level with the Contractor or any Subcontractor to the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

5.2.1. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract and in no instance later than (30) days after award of the Contract, shall furnish in writing to the Owner through the Architect/Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity.

5.2.2. The Contractor shall not contract with a proposed person or entity to which the Owner or Architect/Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3. If the Owner or Architect/Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect/Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect/Engineer makes reasonable objection to such substitute. The Contractor shall not change or substitute for a Subcontractor who was required to be listed on the bid without first getting the approval of the Owner.

5.3. SUBCONTRACTUAL RELATIONS

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

5.3.2. Upon written request by the Owner, the Contractor shall require its subcontractors to provide to it performance and payment securities for their portion of the Work in the types and form defined in statute (18-2-201 and 18-2-203 MCA) for all sub-contractual agreements.

5.3.3. The Contractor shall prepare a Subcontractors' and Suppliers' chart in CSI division format acceptable to the Owner which lists by name, all contact information, job category, and responsibility the Contractor's Subcontractors (at all tiers or levels) and Suppliers with a pecuniary interest in the Project of greater than \$5,000.00. The Contractor shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a timely objection. The Contractor shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name and qualifications of any proposed replacements. The Owner shall have the right to reject any proposed replacements without cost or claim being made by the Contractor. The chart shall be provided to the Owner at the time of the pre-construction conference but no less than 30 days after award of the Contract.

5.3.4. All Contractors and Subcontractors to this contract must comply with all Montana Department of Labor and Industry requirements, regulations, rules, and statutes.

5.3.5. In compliance with state statutes, the Contractor will have the 1% Gross Receipts Tax withheld from all payments. Each "Public Contractor" includes all Subcontractors with contracts greater than \$5,000 each. The Contractor and all Subcontractors will withhold said 1% from payments made to all Subcontractors with contracts greater than \$5,000.00 and make it payable to the Montana Department of Revenue. The Contractor and all Subcontractors shall also submit documentation of all contracts greater than \$5,000.00 to the Montana Department of Revenue on the Department's prescribed form.

5.4. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

5.4.1.1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and,

5.4.1.2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2. Upon such assignment, if the Work has been suspended for more than 30 days as a result of the Contractor's default, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such adjustment shall be at the expense of the Contractor.

5.4.3. The Contractor shall engage each of its subcontractors and suppliers with written contracts that preserve and protect the rights of the Owner and include the acknowledgement and agreement of each subcontractor and supplier that the Owner is a third-party beneficiary of their sub-contractual and supplier agreements. The Contractor's agreements shall require that in the event of default by the Contractor or termination of the Contractor, and upon request of the Owner, the Contractor's subcontractors and suppliers will perform services for the Owner.

5.4.4. Construction Contractor Registration: All Subcontractors at any tier or level are required to be registered with the Department of Labor and Industry under 39-9-201 and 39-9-204 MCA prior to the Contract being executed by the Owner. Subcontractors shall demonstrate to the Contractor that it has registered or promises that it will register immediately upon notice of award and prior to the commencement of any work.

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1. OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2. MUTUAL RESPONSIBILITY

6.2.1. The Contractor shall afford the Owner and separate contractors reasonable opportunity' for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3. The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5. The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3. OWNER'S RIGHT TO CLEAN UP

6.3.1. If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect/Engineer will determine the responsibility of those involved and allocate the cost accordingly.

ARTICLE 7 – CHANGES IN THE WORK

7.1. GENERAL

7.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Minor changes as ordered by the Architect/Engineer has the definition provided in Paragraph 7.4

7.1.2. A Change Order shall be based upon agreement among the Owner, Contractor, and Architect/Engineer; a Construction Change Directive requires agreement by the Owner and Architect/Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect/Engineer alone.

7.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

7.1.4. No act, omission, or course of dealing, shall alter the requirement that Change Orders or Construction Change Directives shall be in writing and signed by the Owner, and that Change Orders and Construction Change Directives are the exclusive method for effecting any adjustment to the Contract. The Contractor understands and agrees that neither the Contract Sum nor the Contract Time can be changed by implication, oral agreement, verbal directive, or unsigned Change Order.

7.2. CHANGE ORDERS

7.2.1. A Change Order is a written instrument prepared by the Architect/Engineer and signed by the Owner, Contractor and Architect/Engineer, stating their agreement upon all of the following:

- 7.2.1.1. change in the Work;
- 7.2.1.2. the amount of the adjustment, if any, in the Contract Sum; and,
- 7.2.1.3. the extent of the adjustment, if any, in the Contract Time.

7.2.2. The cost or credit to the Owner resulting from a change in the Work shall be determined as follows:

7.2.2.1. Per the limitations of this Subparagraph, plus a 5% allowance for overhead and a 10% allowance for profit. The allowances for overhead and for profit are limited to the percentages as specified herein unless they are determined to be unreasonable by the Architect/Engineer (not the Contractor) per Subparagraph 7.3.9 for each Change Order or Construction Change Directive; or,

7.2.2.2. By one of the methods in Subparagraph 7.3.3, or as determined by the Architect/Engineer per Subparagraph 7.3.9, plus a 5% allowance for overhead and a 10% allowance for profit. The allowances for overhead and for profit are limited to the percentages as specified herein unless they are determined to be unreasonable by the Architect/Engineer (not the Contractor) per Subparagraph 7.3.9 for each Change Order or Construction Change Directive.

7.2.2.3. The Contractor's proposed increase or decrease in cost shall be limited to costs listed in Subparagraph 7.3.9.1 through 7.3.9.5.

7.2.3. The Contractor shall not submit any Change Order, response to requested cost proposals, or requested changes which are incomplete and do not contain full breakdown and supporting documentation in the following three areas:

7.2.3.1. Direct costs (only those listed in Subparagraph 7.3.9.1 through 7.3.9.5 are allowable);

7.2.3.2. Indirect costs (limited as a percentage on each Change Order per Supplementary General Conditions, Paragraph 7.2.2); and

7.2.3.3. Consequential items (e.g. time extensions, credits, logic, reasonableness, impacts, disruptions, dilution).

7.2.4. Any Change Order, responses to requested proposals, or requested changes submitted by the Contractor which, in the opinion of the Architect/Engineer, are incomplete, may be rejected and returned to the Contractor without comment. It is the responsibility of and incumbent upon the Contractor to ensure and confirm that all Change Orders, responses to requested proposals, or requested changes are complete prior to submission.

7.2.5. Overhead, applicable to all areas and sections of the Contract Documents, means "Indirect Costs" as referenced in Subparagraph 7.2.3.2. Indirect costs are inclusive of, but not limited to, the following: home office overhead; off-site supervision; home office project management; change order and/or proposal preparation, design, research, negotiation and associated travel; effects of disruption and dilution of management and supervision off-site; time delays; coordination of trades; postage and shipping; and, effective increase in guarantee and warranty durations. Indirect costs applicable to any and all changes in the work, either through Change Order or Construction Change Directive, are limited to the percentage allowance for overhead in Subparagraph 7.2.2.

7.2.6. By signature on any Change Order, the Contractor certifies that the signed Change Order is complete and includes all direct costs, indirect costs and consequential items (including additional time, if any) and is free and clear of all claims or disputes (including, but not limited to, claims for additional costs, additional time, disruptions, and/or impacts) in favor of the Contractor, subcontractors, material suppliers, or other persons or entities concerning the signed change order and on all previously contracted Work and does release the Owner from such claims or demands.

7.2.7. Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Change Order shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor's most recent Critical Path Schedule in use prior to the change. Changes which affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time, shall not result in an increase in the Contract Time.

7.2.8. Supervision means on-site, field supervision and not home office overhead, off-site management or off-site supervision.

7.2.9. Labor means those persons engaged in construction occupations as defined in Montana Prevailing Wage Rates for Building Construction or Heavy/Highway as bound in the Contract Documents and does not include design, engineering, superintendence, management, on-site field supervision, home office or other off-site management, off-site supervision, office or clerical work.

7.3. CONSTRUCTION CHANGE DIRECTIVES

7.3.1. A Construction Change Directive is a written order prepared by the Architect/Engineer directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2. Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Construction Change Directive, shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor's most recent Critical Path Schedule in use prior to the change. Changes that affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time shall not result in an increase in the Contract Time.

7.3.3. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order.

7.3.4. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.4.1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.4.2. unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.4.3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

7.3.4.4. By actual cost as shown by the Contractor's and Subcontractor's itemized invoices; or

7.3.4.5. as provided in Subparagraph 7.3.9.

7.3.5. Costs shall be limited to the following: cost of materials, including cost of delivery; cost of labor, including social security, old age and unemployment insurance and fringe benefits under collective bargaining agreements; workers' compensation insurance; bond premiums; and rental value of power tools and equipment.

7.3.6. Overhead and profit allowances shall be limited on all Construction Change Directives to those identified in 7.2.2.

7.3.7. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect/Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.8. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.9. If the Contractor does not respond or disagrees with the method for adjustment in the Contract Sum in writing within seven (7) calendar days, the method and the adjustment made shall be determined by the Architect/Engineer on the basis of reasonable expenditures and/or savings of those performing the Work directly attributable to the change including, in the case of an increase in the Contract Sum, plus an allowance for overhead and profit as listed under Subparagraph 7.2.2. In such case, and also under Clause 7.3.4.3, the Contractor shall keep and

present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.9 shall be limited to the following:

- 7.3.9.1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance as determined by the Prevailing Wage Schedules referenced in the Contract Documents;
- 7.3.9.2. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 7.3.9.3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 7.3.9.4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 7.3.9.5. additional costs of field supervision and field office personnel directly attributable to the change.

7.3.10. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect/Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.11. Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect/Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.12. When the Owner and Contractor agree with the determination made by the Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4. MINOR CHANGES IN THE WORK

7.4.1. The Architect/Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 – TIME

8.1. DEFINITIONS

8.1.1. Time is of the essence in performance, coordination, and completion of the Work contemplated herein. The Owner may suffer damages if the Work is not completed as specified herein. When any duration or time period is referred to in the Contract Documents by days, the first day shall be determined as the day following the current day of any event or notice starting a specified duration.

8.1.2. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.3. The date of commencement of the Work is the date established in the NOTICE TO PROCEED AS ISSUED BY THE OWNER.

8.1.4. The date the Contractor reaches Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.8.

8.1.5. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.1.6. Liquidated Damages. The Owner may suffer loss if the project is not substantially complete on the date set forth in the contract documents. The Contractor and his surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the work is substantially complete: **[ALPHA NOTATION AND NO/100 DOLLARS (\$0.00)]**

8.1.7. The Contractor shall not be charged liquidated or actual damages when delay in completion of the Work is due to:

8.1.7.1. Any preference, priority or allocation order issued by the government;

8.1.7.2. Unforeseeable cause beyond the control and without the fault or negligence of the Contractor, such as acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. All such occurrences resulting in delay must be documented and approved by Change Order.

8.1.7.3. Any delays of Subcontractors or suppliers occasioned by any of the causes specified in 8.1.7.1 and 8.1.7.2 of this article.

8.1.7.4. The Contractor is completely obligated and responsible to provide written notice of each day of delay as provided for in Paragraph 4.3.

8.1.8. Contract Time. All work shall reach Substantial Completion **[by or within: NUMBER OF DAYS OR DATE consecutive calendar days]** after the start date on the written NOTICE TO PROCEED.

8.2. PROGRESS AND COMPLETION

8.2.1. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the date on the Notice to Proceed and in no case prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.2.3. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.4. If the Contractor falls behind the latest construction schedule by more than 14 calendar days through its own actions or inaction, neglect, inexperience, lack of oversight and management of the Work including that of any Subcontractors, written notice to the Owner and Architect/Engineer shall be provided within three (3) days with explanation of how the Contractor intends to get back on schedule. Response to getting back on schedule consists of providing a sufficient number of qualified workers and/or proper materials or an acceptably reorganized schedule to regain the lost time in a manner acceptable to the Owner.

8.3. DELAYS AND EXTENSIONS OF TIME

8.3.1. If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer may determine.

8.3.2. Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3. This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

PAYMENTS AND COMPLETION

9.1. CONTRACT SUM

9.1.1. The Contract Sum is stated in the Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2. SCHEDULE OF VALUES

9.2.1. Before the first Application for Payment, the Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3. APPLICATIONS FOR PAYMENT

9.3.1. The Contractor shall submit to the Architect/Engineer an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be signed and supported by such data substantiating the Contractor's right to payment as the Owner or Architect/Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1. At the Owner's direction, the entire Applications For Payment process (including schedules of value, change orders, and required documentation) will use GCPay (<http://www.gcpay.com/>) or equal electronic method. System must allow multi-tier sub-contractor usage. Equal system must be approved by written consent from the Owner prior to submittal of the schedule of values.

9.3.1.2. GCPay or equal electronic method shall be in the Owner's format and in compliance with all provisions of the Contract Documents.

9.3.1.3. Fee for usage is provided in the terms and conditions available from GCPay, is per approved payment application, and will be paid by the entity submitting the application for payment. This usage is designed to help eliminate mail time, paper usage, overnight fees, and expedite the approval process. The Contractor is responsible for all costs, expenses, and charges connected to the use of GCPay or equal electronic system.

9.3.1.4. The Contractor agrees to be bound by the terms and conditions issued by GCPay or equal electronic system approved by the Owner.

9.3.1.5. For a copy of the terms and conditions, user guide, and questions/concerns regarding usage and implementation of the GCPay system, contact:

Director of Customer Relations

Hart Business Solutions, LLC
PO Box 487; 828 North Mecklenburg Avenue
South Hill, Virginia 23970

<http://www.gcpay.com/>

Toll Free: (877) 447-2584

Direct: (434) 774-7212

Fax: (434) 447-5793

9.3.2. NOTICE OF APPROVAL OF PAYMENT REQUEST PROVISION. Per Title 28, Chapter 2, Part 21, this contract allows the Owner to change the number of days to approve a Contractor's payment request. This contract allows the Owner to approve the Contractor's payment request within thirty-five (35) calendar days after it is received by the Owner without being subject to the accrual of interest.

9.3.3. As provided in Subparagraph 7.3.11, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect/Engineer, but not yet included in Change Orders.

9.3.4. Applications for payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

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

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

9.3.7. Until the work is complete, the Owner will pay 95% of the amount due the Contractor on account of progress payments.

9.3.7.1. If the Work and its progress are not in accordance with all or any part, piece, or portion of the Contract Documents, the Owner may, at its sole discretion and without claim by the Contractor, increase the amount held as retainage to whatever level deemed necessary to effectuate performance and progress of the Work, for anticipated repairs, warranties or completion of the Work by the Contractor or through the letting of other contracts. The Contractor will not be entitled to additional costs, expenses, fees, time, and such like, in the event the Owner increases the amount held as retainage due to non-compliance and/or non-performance with all or any part, piece, or portion of the Contract Documents.

9.3.7.2. Prior to the first application for payment, the Contractor shall submit the following information on the appropriate forms:

9.3.7.2.1. Schedule of Amounts for Contract Payment (Form 100): This form shall contain a breakdown of the labor, material and other costs associated with the various portions of the work and shall be the basis for the progress payments to the Contractor. The use of GCPay or equal electronic method shall be in the Owner's format.

9.3.7.2.2. Project/Progress Schedule: If no Schedule (or revised Schedule) is provided with each and every Periodic Estimates for Partial Payment, the Architect/Engineer and/or Owner may return the pay request, or hold it, and may choose not pay for any portion of the Work until the appropriate Schedule, indicating all changes, revisions and updates, is provided. No claim for additional costs or interests will be made by the Contractor or any subcontractor on account of holding or non-payment of the Periodic Estimate for Partial Payment request.

9.3.7.3. Progress Payments

9.3.7.3.1. Periodic Estimates for Partial Payment shall be on a form provided by the Owner (Form 101) and submitted to the Architect/Engineer for payment by the Owner. Payment shall be requested for the labor and material incorporated in the work to date and for materials suitably stored, less the aggregate of previous payments, the retainage, and the 1% gross receipts tax.

9.3.7.3.2. The Contractor, by submission of any partial pay request, certifies that every request for partial payment is correct, true and just in all respects and that payment or credit had not previously been received. The Contractor further warrants and certifies, by submission of any partial pay request, that all previous work for which payment has been received is free and clear of all liens, disputes, claims, security interests, encumbrances, or causes of action of any type or kind in favor of the Contractor, subcontractors, material suppliers or other persons or entities and does release the Owner from such.

9.3.7.3.3. Progress payments do not constitute official acceptance of any portion of the work or materials whether stored on or off-site.

9.3.7.3.4. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.

9.3.7.4. The Contractor may submit obligations/securities in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by a Financial Institution in lieu of retainage by the Owner. The Owner will establish the amount that would otherwise be held as retainage. Should the Contractor choose to submit obligations/securities in lieu of retainage, the Owner will require the Financial Institution to execute the Owner's "Account Agreement for Deposit of Obligations Other Than Retainage" (Form 120) prior to submission of any obligations/securities in accordance with 18-1-302 MCA. The Contractor must extend the opportunity to participate in all obligations/securities in lieu of retainage on a pro rata basis to all subcontractors involved in the project and shall be solely responsible for the management and administration of same. The Owner assumes no liability or responsibility from or to the Contractor or Subcontractors regarding the latter's participation.

9.3.7.5. The Contractor shall maintain a monthly billing cycle.

9.4. CERTIFICATES FOR PAYMENT

9.4.1. The Architect/Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect/Engineer determines is properly due, or notify the Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. For the purposes of this paragraph regarding certification of payment, electronic mail and/or notes provided through the use of an electronic approval system such as GCPay shall constitute written notice.

9.4.2. The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect/Engineer has: (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or, (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5. DECISIONS TO WITHHOLD CERTIFICATION

9.5.1. The Architect/Engineer may withhold or reject a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect/Engineer's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect/Engineer is unable to certify payment in the amount of the Application, the Architect/Engineer will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect/Engineer cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make such representations to the Owner. The Architect/Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect/Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.4, because of:

9.5.1.1. defective Work not remedied;

9.5.1.2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

9.5.1.3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.5.1.5. damage to the Owner or another contractor;

9.5.1.6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or,

9.5.1.7. persistent failure to carry out the Work in accordance with the Contract Documents.

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

9.5.3. Owner's Right to Refuse Payment: The Architect/Engineer's approval, or partial approval, of the Contractor's request for payment shall not preclude or prevent the Owner from exercising any of its remedies under this Contract. The Owner shall have right to refuse to make payment(s) to the Contractor due to:

9.5.3.1. the Contractor's failure to perform the Work in compliance with the Contract Documents;

- 9.5.3.2. the Contractor's failure to correct any defective or damaged Work;
- 9.5.3.3. the Contractor's failure to accurately represent the Work performed in the pay request;
- 9.5.3.4. the Contractor's performance of its Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Work, or any portion thereof, to be delayed;
- 9.5.3.5. the Contractor's failure to use funds previously paid to it by the Owner to pay for the Contractor's Work-related obligations including, but not limited to, subcontractors and suppliers on this Project;
- 9.5.3.6. claims made, or anticipated by the Owner to be made, against the Owner or its property;
- 9.5.3.7. inclusion in the pay request of any amounts in dispute or part of a claim;
- 9.5.3.8. Damage or loss caused by the Contractor, including its subcontractors and suppliers; or,
- 9.5.3.9. The Contractor's failure or refusal to perform its obligations to the Owner.

9.6. PROGRESS PAYMENTS

9.6.1. After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents or the Owner may take any action the Owner deems necessary under Subparagraph 9.5.3.

9.6.2. The Contractor shall promptly pay each Subcontractor in accordance with Title 28, Chapter 1, Part 21, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3. The Contractor is prohibited from holding higher amounts in retainage on any Subcontractor than the Owner is holding from the Contractor.

9.6.4. The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect/Engineer and Owner on account of portions of the Work done by such Subcontractor.

9.6.5. Neither the Owner nor Architect/Engineer shall have an obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

9.6.6. Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3, 9.6.4, and 9.6.5.

9.6.7. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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

9.7. FAILURE OF PAYMENT

9.7.1. If the Owner does not approve payment to the Contractor within thirty-five (35) calendar days after the receipt of a certified Application for Payment, then the Contractor may, upon seven additional days' written notice to the Owner and Architect/Engineer, suspend the Work until payment of the amount owing has been received. Nothing in the Subparagraph shall limit the Owner's rights and options as provided in Subparagraph 9.5.3. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8. SUBSTANTIAL COMPLETION

9.8.1. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

9.8.3. Upon receipt of the Contractor's list, the Architect/Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect/Engineer's Inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the

Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect/Engineer. In such case, the Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion.

9.8.4. The Contractor shall ensure the project is substantially complete prior to requesting any inspection by the Architect/Engineer so that no more than one (1) inspection is necessary to determine Substantial Completion for all or any portion of the Work. If the Contractor does not perform adequate inspections to develop a comprehensive list as required in Subparagraph 9.8.2 and does not complete or correct such items upon discovery or notification, the Contractor shall be responsible and pay for the costs of the Architect/Engineer's additional inspections to determine Substantial Completion.

9.8.5. When the Work or designated portion thereof is substantially complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and which shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. After issuance of the Certificate of Substantial Completion, the Contractor shall finish and complete all remaining items within thirty (30) calendar days of the date on the Certificate. The Architect/Engineer shall identify and fix the time for completion of specific items which may be excluded from the thirty (30) calendar day time limit. Failure to complete any items within the specified time frames may be deemed by the Owner as default of the contract on the part of the Contractor.

9.8.6. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety if there are claims or past payment issues, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9. PARTIAL OCCUPANCY OR USE

9.9.1. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect/Engineer.

9.9.2. Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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

9.10. FINAL COMPLETION AND FINAL PAYMENT

9.10.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer will promptly make such inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect/Engineer will approve the Contractor's final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect/Engineer's signature on the Contractor's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2. Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Architect/Engineer:

9.10.2.1. completed Affidavit on Behalf of Contractor (Form 106) that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;

9.10.2.2. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;

9.10.2.3. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents

9.10.2.4. Consent of Surety to make final payment (Form 103); and,

9.10.2.5. if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

9.10.3. The Contractor and his surety accepts and assumes responsibility, liability, and costs for and agrees to defend and hold harmless the Owner for and against any and all actions as a result of the Owner making final payment.

9.10.4. By submitting any Application for Payment to the Architect/Engineer the Contractor and his surety certify and declare that all bills for materials, supplies, utilities and for all other things furnished or caused to be furnished by the Contractor and all Subcontractors and used in the execution of the Contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities and/or demands of State Agencies, subcontractors, suppliers, mechanics, laborers or any others resulting from or arising out of any work done, caused to be done or ordered to be done by the Contractor under the contract.

9.10.5. In consideration of the prior payments and the final payment made and all payments made for authorized changes, the Contractor releases and forever discharges the Owner from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the Owner, arising out of or in any way relating to the contract and authorized changes.

9.10.6. The date of Final Payment by the Owner shall constitute Final Acceptance of the Work. The determining date for the expiration of the warranty period shall be as specified in Paragraphs 3.5 and 12.2.2.

9.10.7. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect/Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.8. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

9.10.8.1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

9.10.8.2. failure of the Work to comply with the requirements of the Contract Documents;
or,

9.10.8.3. terms of special warranties required by the Contract Documents.

9.10.9. Acceptance of final payment by the Contractor, a Subcontractor, or material supplier, shall constitute a waiver of any and all obligations, liens, claims, security interests, encumbrances and/or liabilities against the Owner except those previously made in writing per the requirements of Paragraph 4.3 and as yet unsettled at the time of submission of the final Application for Payment.

9.10.10. The Owner's issuance of Final Payment does not constitute a waiver or release of any kind regarding any past, current, or future claim the Owner may have against the Contractor and/or the surety.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1. SAFETY PRECAUTIONS AND PROGRAMS

10.1.1. The Contractor shall be responsible for initiating, maintaining and supervising all safety, safety precautions, and safety programs in connection with the performance of the Contract.

10.1.2. Contractor represents and warrants to Owner that he is aware of all safety requirements of OSHA, EPA, and all other governing bodies and the safety provisions of all applicable codes as such requirements and provisions relate to work to be completed under this Contract and agrees to be bound by such. Contractor agrees to comply with all such provisions and requirements and to perform work under this contract in a safe manner with the highest regard for safety of his employees and all other individuals at the work site. Contractor further agrees to maintain his tools, equipment, and moving vehicles in a safe operating condition and take all other actions necessary to provide a safe working environment for performance of work required under this contract. Material data safety sheets are to be kept on site by the contractor and available at all times.

10.1.3. Safety shall be a prime concern at all times for the Contractor and for all Subcontractors (at any tier or level). The Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including all site safety, safety precautions, safety programs, and safety compliance with OSHA and all other governing bodies.

10.1.4. The Contractor agrees to and accepts all responsibility for safety throughout the duration of the Work. The Contractor agrees that the Owner and Architect/Engineer are not, and cannot be held liable for, identifying safety violations or hazardous conditions. The Contractor agrees that it will defend, protect, indemnify and hold harmless the Owner against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys' fees), and losses from any cause whatsoever with regard to injuries, accidents, lawsuits, claims, actions, losses, costs, damages of any kind, including the Owner's legal expenses, arising out of, in connection with, or incidental to the Contract.

10.2. SAFETY OF PERSONS AND PROPERTY

10.2.1. The Contractor shall take precautions for safety of, and shall provide protection to prevent damage, injury or loss to:

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

10.2.1.2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and,

10.2.1.3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

10.2.3. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flagmen, danger signals, and signs, and shall take all necessary precautions for the protection of the work and the safety of the public.

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

10.2.5. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

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

10.2.7. The Contractor shall not encumber or load or permit any part of the construction site to be encumbered or loaded so as to endanger the safety of any person(s).

10.3. HAZARDOUS MATERIALS

10.3.1. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect/Engineer in writing.

10.3.2. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect/Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect/Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect/Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect/Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect/Engineer, Architect/Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due in whole or in part to the party seeking indemnity. Each party shall bear the costs, damage, loss, and/or expenses for its own negligence as it relates to this Paragraph 10.3.

10.4. The Owner shall not be responsible under this Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents. The Contractor shall be held responsible for remediation, costs, damages, loss, and/or expenses related to its own negligence, whether in whole or part, for such materials and substances brought to the site.

10.5. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. The Owner shall not, nor be required to, indemnify or hold harmless the Contractor for costs, damages, or any other expenses caused in whole or in part by the Contractor's negligence, including those of Subcontractors.

10.6. HAZARDOUS SUBSTANCES

10.6.1. The General Contractor shall immediately notify the Owner and Architect/Engineer, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination of the Site (which includes any existing structures). If environmental contamination is encountered, the Contractor shall:

10.6.1.1. cease performance of all Work or portion of Work affected by or affecting such contamination;

10.6.1.2. secure the contaminated area against intrusion;

10.6.1.3. not disturb or remove the contamination;

10.6.1.4. not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and,

10.6.1.5. take any other steps necessary to protect life and health.

10.7. EMERGENCIES

10.7.1. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 - INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Montana with a rating no less than "A-", such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

11.1.1.2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

11.1.1.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

11.1.1.4. claims for damages insured by usual personal injury liability coverage;

11.1.1.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

11.1.1.6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

11.1.1.7. claims for bodily injury or property damage arising out of completed operations; and,

11.1.1.8. claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2. The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until termination of any coverage required to be maintained after final payment.

11.1.3. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire at any time prior to Final Acceptance and then not until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.1.4. At the request of the Owner, the Contractor shall provide copies of all insurance policies to the Owner.

11.2. INSURANCE, GENERAL REQUIREMENTS

11.2.1. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual

liability, which may arise from or in connection with the performance of the Work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. The Contractor is responsible for all deductibles regardless of policy or level of coverage. The Owner reserves the right to demand, and the Contractor agrees to provide, copies of any and all policies at any time.

11.2.2. Hold Harmless and Indemnification: The Contractor shall protect, defend, and save the state, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments whatsoever (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, arises out of services performed or omissions of services or in any way results from the negligent acts or omissions of the Contractor, its agents, agents, or subcontractors.

11.2.3. Contractor's Insurance: insurance required under all sections herein shall be in effect for the duration of the contract that extends through the warranty period. Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence any Work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.

11.2.4. Certificates of Insurance and Endorsements. All certificates of insurance and the additional insured endorsements are to be received by the state prior to issuance of the Notice to Proceed. The contractor is responsible to ensure that all policies and coverages contain the necessary endorsements for the State being listed as an additional insured. The state reserves the right to require complete copies of all insurance policies at any time to verify coverage. The contractor shall notify the state within 30 days of any material change in coverage.

11.3. WORKERS' COMPENSATION INSURANCE

11.3.1. The Contractor shall carry **Workers' Compensation Insurance**. Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.

11.4. COMMERCIAL GENERAL LIABILITY INSURANCE

11.4.1. Each Contractor shall carry per occurrence coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; products and materials stored off-site; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

11.4.1.1. **\$1,000,000 per occurrence; aggregate limit of \$2,000,000;**

11.4.1.2. The **Commercial General and Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death, sickness, disease, occupational sickness or disease, personal injury liability coverage and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain the liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

11.4.1.3. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able to list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.

11.4.1.4. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.

11.4.1.5. The Contractor's insurance coverage shall be PRIMARY insurance as respects the State, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it. No waivers of subrogation or endorsements limiting, transferring, or otherwise indemnifying liable or responsible parties of the Contractor or any subcontractor will be accepted.

11.5. PROPERTY INSURANCE (ALL RISK)

11.5.1. The Contractor shall purchase and maintain Builder's Risk/Installation insurance on a special causes of loss form ("all risk") upon the entire work, including vandalism and malicious mischief and theft of material stored off-site, on-site or in transit, currently authorized at the site to the full insurable value thereof. Such insurance shall be in a company or companies authorized to do business in the state of Montana. This insurance shall include the interests of the Owner, the Contractor, Sub-contractors and sub-subcontractors in the work and shall include "All Risk" Insurance for physical loss or damage including, without duplication of coverage, fire, leakage,

steam boilers, pressure vessels, oil or gasoline tanks, theft, vandalism and malicious mischief, and other such risks. If not covered under all risk insurance or otherwise provided in the contract documents, the Contractor shall effect and maintain similar property insurance on portions of the work, products or materials stored off the site or in transit when such portions of the work are to be included in an application for payment. Additionally, all certificates shall include the project name and A/E project number.

11.5.1.1. The form of policy for this coverage shall be "completed value of the work" for all new structures and "cost of the work for all renovations" of existing structures.

11.5.1.2. If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim.

11.5.1.3. Separate certificates of insurance for property coverage shall be provided for all materials stored off-site.

11.6. ASBESTOS ABATEMENT INSURANCE

11.6.1. If Asbestos Abatement is identified as part of the Work under this contract, the Contractor or any subcontractor involved in asbestos abatement shall purchase and maintain **Asbestos Liability Insurance** for coverage of bodily injury, sickness, disease, death, damages, claims, errors or omissions regarding the asbestos portion of the work *in addition to* the CGL Insurance by reason of any negligence in part or in whole, error or omission committed or alleged to have been committed by the Contractor or anyone for whom the Contractor is legally liable.

11.6.2. Such insurance shall be in "per occurrence" form and shall clearly state on the certificate that asbestos work is included in the following limits:

11.6.2.1. **\$1,000,000 per occurrence; aggregate limit of \$2,000,000.**

11.6.3. Asbestos Liability Insurance as carried by the asbestos abatement subcontractor in these limits in lieu of the Contractor's coverage is acceptable provided the Contractor and the State of Montana are named as additional insureds and that the abatement subcontractor's insurance is PRIMARY as respects both the Owner and the Contractor. If the Contractor or any other subcontractor encounters asbestos, all operations shall be suspended until abatement with the associated air monitoring clearances are accomplished. The certificate of coverage shall be provided by the asbestos abatement subcontractor to both the Contractor and the Owner.

11.7. PERFORMANCE BOND AND LABOR & MATERIAL PAYMENT BOND (BOTH ARE REQUIRED ON THIS PROJECT)

11.7.1. The Contract shall furnish a Performance Bond in the amount of 100% of the contract price as security for the faithful performance of his contract (18-2-201 MCA). The Contractor shall also furnish a Labor and Material Payment Bond in the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection

therewith (18-2-201MCA). The bonds shall be executed on forms furnished by the Owner and no other forms or endorsements will be acceptable. The bonds shall be signed in compliance with state statutes (33-17-1111 MCA). Bonds shall be secured from a state licensed bonding company. Power of Attorney is required with each bond. Attorneys-in-fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney:

11.7.1.1. one original copy shall be furnished with each set of bonds.

11.7.1.2. Others furnished with a set of bonds may be copies of that original.

11.7.2. The Owner reserves the right at any time during the performance of Work to require bonding of Subcontractors provided by the General Contractor. Should this occur, the Owner will cover the direct cost. This shall not be construed as to in any way affect the relationship between the General Contractor and his Subcontractors.

11.7.3. Surety must have an endorsement stating that their guarantee of Contractor's performance automatically covers the additional contract time added to a Contractor's contract by Change Order.

11.7.4. A change in the Contractor's organization shall not constitute grounds for Surety to claim a discharge of their liability and requires an endorsement from Surety so stating.

11.7.5. The Contractor is required to notify Surety of increase in contract amount resulting from Change Orders within 48 hours of submitting an application for Change Order and submit a copy of Surety's written acknowledgment and consent to Owner before Change Order can be approved. A fax with hard copy to follow is acceptable. If hard copy is not received by Owner before Application for Payment on any portion or all of said Change Order, it will not be accepted by Owner for payment.

11.7.6. The Surety must take action within 30 days of notice of default on the part of the Contractor or of any claim on bonds made by the Owner or any Subcontractor or supplier.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1. UNCOVERING OF WORK

12.1.1. If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2. If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to examine prior to it being covered, the Architect/Engineer may request to

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

12.2. CORRECTION OF WORK

12.2.1. BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1. The Contractor shall promptly correct Work that fails to conform to the requirements of the Contract Documents or that is rejected by the Architect/Engineer, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense. The Contractor is responsible to discover and correct all defective work and shall not rely upon the Architect/Engineer's or Owner's observations.

12.2.1.2. Rejection and Correction of Work in Progress. During the course of the Work, the Contractor shall inspect and promptly reject any Work that:

12.2.1.2.1. does not conform to the Construction Documents; or,

12.2.1.2.2. does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities, and agencies having jurisdiction over the Project.

12.2.1.3. The Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion. The Contractor shall bear all costs of correcting such Work, including additional testing, inspections, and compensation for all services and expenses necessitated by such corrective action.

12.2.2. AFTER SUBSTANTIAL COMPLETION AND AFTER FINAL ACCEPTANCE

12.2.2.1. In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Final Acceptance of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a

reasonable time during that period after receipt of notice from the Owner or Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.3.

12.2.2.1.1. The Contractor shall remedy any and all deficiencies due to faulty materials or workmanship and pay for any damage to other work resulting there from, which shall appear within the period of Substantial Completion through one (1) year from the date of Final Acceptance in accordance with the terms and conditions of the Contract and with any special guarantees or warranties provided in the Contract Documents. The Owner shall give notice of observed deficiencies with reasonable promptness. All questions, claims or disputes arising under this Article shall be decided by the Architect/Engineer. All manufacturer, product and supplier warranties are in addition to this Contractor warranty.

12.2.2.1.2. The Contractor shall respond within seven (7) days after notice of observed deficiencies has been given and he shall proceed to immediately remedy these deficiencies.

12.2.2.1.3. Should the Contractor fail to respond to the notice or not remedy those deficiencies; the Owner shall have this work corrected at the expense of the Contractor.

12.2.2.1.4. Latent defects shall be in addition to those identified above and shall be the responsibility of the Contractor per the statute of limitations for a written contract (27-2-208 MCA) starting from the date of Final Acceptance.

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

12.2.2.3. The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

12.3. ACCEPTANCE OF NONCONFORMING WORK

12.3.1. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1. GOVERNING LAW

13.1.1. The Contract shall be governed by the laws of the State of Montana and venue for all legal proceedings shall be the First Judicial District, Lewis & Clark County.

13.2. SUCCESSORS AND ASSIGNS

13.2.1. The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempt to make such assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3. WRITTEN NOTICE

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

13.4. RIGHTS AND REMEDIES

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

13.4.2. No action or failure to act by the Owner, Architect/Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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13.5. TESTS AND INSPECTIONS

13.5.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so that the Architect/Engineer may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2. If the Architect/Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect/Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3 shall be at the Owner's expense.

13.5.3. If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect/Engineer's services and expenses shall be at the Contractor's expense.

13.5.4. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect/Engineer.

13.5.5. If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing.

13.5.6. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6. INTEREST

13.6.1. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7. COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1. As between the Owner and Contractor:

13.7.1.1. **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

13.7.1.2. **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and,

13.7.1.3. **After Final Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8. PAYROLL AND BASIC RECORDS

13.8.1. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the Contractor for a period of three years after the date of the Owner's Final Acceptance of the Project.

ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT

14.1. TERMINATION BY THE CONTRACTOR

14.1.1. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

14.1.1.1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or,

14.1.1.2. an act of government, such as a declaration of national emergency which requires all Work to be stopped.

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

14.1.3. If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect/Engineer, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit but not damages.

14.1.4. If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect/Engineer, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2. TERMINATION BY THE OWNER FOR CAUSE

14.2.1. The Owner may terminate the Contract if the Contractor:

14.2.1.1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.2.1.2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

14.2.1.3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or,

14.2.1.4. otherwise is guilty of any breach of a provision of the Contract Documents.

14.2.2. When any of the above reasons exist, the Owner, upon certification by the Architect/Engineer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

14.2.2.1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2. accept assignment of subcontracts pursuant to Paragraph 5.4; and,

14.2.2.3. finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect/Engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect/Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

14.3. SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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

14.3.2.1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or,

14.3.2.2. that an equitable adjustment is made or denied under another provision of the Contract.

14.4. TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

14.4.2.1. cease operations as directed by the Owner in the notice;

14.4.2.2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work, and;

14.4.2.3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. The Contractor shall provide a full and complete itemized accounting of all costs.

EQUAL OPPORTUNITY

15.1. The Contractor and all Sub-contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age and shall comply with all Federal and State laws concerning fair labor standards and hiring practices. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

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15.2. The Contractor and all Sub-contractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

[END OF GENERAL CONDITIONS]

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SUPPLEMENTAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

FOR STATE OF MONTANA GENERAL CONDITIONS

Deleted: FACILITIES PLANNING, DESIGN & CONSTRUCTION¶
SIXTH AVENUE AND GRANT STREET •
P.O. BOX 172760 • BOZEMAN, MONTANA
59717-2760¶
PHONE: (406) 994-5413 • FAX: (406) 994-5665

ARTICLE 1 – GENERAL PROVISIONS

1.6.1 Insert in the sixth line: "All documents which constitute the instruments of service are the property of the Owner." In lieu of the phrase "Unless otherwise indicated, the Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors of them... except as defined in the Owner's Contract with the Architect/Engineer."

ARTICLE 2 – THE OWNER

2.1 THE STATE OF MONTANA

2.1.1.1 Insert in the first line "Montana State University, acting through its Director of Facilities Planning, Design and Construction" in lieu of "State of Montana". The State of Montana includes its officers, elected and approved officials, employees and volunteers, and political subdivisions thereof.

2.1.1.2 The State of Montana and Montana State University are synonymous throughout the contract documents.

ARTICLE 3 – THE CONTRACTOR

3.10. CONSTRUCTION SCHEDULES

3.10.1.1 A pre-construction meeting will be held at a time mutually agreed upon by the Owner, Architect/Engineer and Contractor at Facilities Planning, Design and Construction, Montana State University, Bozeman, Montana. The contractor shall review the Contractor's Construction Schedule for the Work. Coordination of operating requirements of the affected buildings, and surrounds, schedule of activities and Owner requirements will be discussed, as well as the order in which the Contractor intends to pursue the work. This schedule will be reviewed and must be accepted by the Owner.

3.13. USE OF SITE

3.13.3 MSU BOZEMAN Vehicle Regulations state:

“All students, faculty, staff, and visitors must register any motor vehicle they park on the University campus, for any reason. A visitor is anyone not defined as student, staff or faculty.”

All Contractor and Contractor employees shall comply with Montana State University parking regulations. MSU parking permits can be purchased at the Huffman Building at Seventh Avenue and Kagy Boulevard. Contractor should call University Police at 994-2121 for permit information. Violators of MSU Bozeman Vehicle Regulations may be ticketed and towed.

Unless otherwise indicated on the drawings, all Contractor and Contractor employee vehicles on campus shall be parked in designated parking lots. If allowed on the drawings, vehicles to a maximum number stated, may be parked in project site areas designated and shall only be Contractor vehicles with company signs clearly visible. No personal vehicles shall be parked at the project site in any case. If a driver of a vehicle not allowed to be parked at the project site must unload equipment, tools, or materials, the vehicle must be immediately thereafter moved to a designated lot or leave campus. Vehicles parked in the project site, other than those allowed on the drawings, may be ticketed and towed.

Access to the project site shall be only by the route designated on the drawings. In cases where a different route must be used for a specific purpose, permission must be obtained from MSU Facilities Services. In no case will vehicles be used on the Centennial Mall paving. Access routes are for delivery of equipment, tools, and not for parking.

Site staging areas for materials and equipment if permitted, will be designated on the drawings if permitted. If not designated, staging is intended to be in the construction area boundaries. Staged materials and equipment must be secured on the ground surface or in trailers. Site staging areas shall be fenced. Vehicles in addition to those allowed to be parked may not be used for staging of equipment, tools, or materials.

3.13.4 The Contractor shall coordinate his operations with the Owner in order that the Owner will have maximum use of existing facilities surrounding the area of the Work, as agreed upon, at all times during normal working hours. Contractor further agrees to coordinate his operations so as to avoid interference with the Owner’s normal operations to as great an extent as possible.

ARTICLE 4 – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

4.6. ARBITRATION

4.6.3 Insert in the second line “the Eighteenth Judicial District, Gallatin County” in lieu of “First Judicial District, Lewis & Clark County.”

4.6.11 In responding to a claim brought by a Contractor, the Owner shall have a minimum of forty-five (45) days in which to respond to a revised claim prior to the arbitration hearing.

ARTICLE 8 - TIME

8.1. DEFINITIONS

8.1.8.1 The Owner will issue a written Notice to Proceed on satisfactory receipt of the signed Contract and all required bonds, insurance and other required submittals. Work commenced before receipt of the Notice to Proceed will be entirely at the Contractor's risk.

8.2. PROGRESS AND COMPLETION

8.2.5 Completion of the work within the stated time and/or by the date stated on the Notice to Proceed is of the essence of this Contract and failure to complete, without approved time extension, may be considered default of the Contract. At the time for completion as stated on the Notice to Proceed or as extended by approved delay claims, if the work is not substantially complete, the Owner may notify the Contractor and the Contractor's surety company in writing of the recourse the Owner intends to take, within the Contract, to assess liquidated damages and /or cause the work to be completed.

8.3. DELAYS AND EXTENSIONS OF TIME

8.3.4 By the act of signing the Contract, the Contractor signifies that he/she and all subcontractors can perform the work within the stated schedule and that subcontractors, manufacturers, suppliers, and deliverers are known to be able to support the schedule. Time extension may be granted only for unforeseen conditions or events out of the Contractor's control causing delay in delivery of materials or causing delay in the Contractor's ability to perform the work within the Contract Documents. The Contractor is expected to take all possible measures and bear all reasonable costs in order to anticipate, control, counteract, and expedite such delay-causing conditions, including finding alternative sources of materials, equipment, shipping, and labor. Notification of any claim for schedule delay must be made in writing to the Owner within one week of the causing event or of first knowledge of a known delay causing condition with supporting documentation as required by the Owner. The Owner will respond in writing within one week to claims of delay. No claims of delay will be entertained after the date of completion as stated on the Notice to Proceed or as extended by previously approved delay claims.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.3. APPLICATIONS FOR PAYMENT

9.3.7.2.3 Subcontractor's List: The Contractor shall list all subcontractors doing work in excess of \$5,000.

9.3.1.1 Delete ARTICLE in its entirety.

9.3.1.2 Delete ARTICLE in its entirety.

9.3.1.3 Delete ARTICLE in its entirety.

9.3.1.4 Delete ARTICLE in its entirety.

9.3.1.5 Delete ARTICLE in its entirety.

9.3.7.2.1. Insert in the first line "Schedule of Values" in lieu of "Schedule of Amounts for Contract Payment". Delete in the third line in its entirety the sentence beginning with the phrase "The use of GCPay or"

9.4. CERTIFICATES FOR PAYMENT

9.4.1. Delete in the fifth line in its entirety the sentence beginning with the phrase "For the purposes of this paragraph".

9.8. SUBSTANTIAL COMPLETION

9.8.4.1 Prior to the inspection, the Contractor shall complete the final clean-up of the project site which, unless otherwise stated in the Contract Documents, shall consist of:

9.8.4.1.1 Removal of all debris and waste. All construction debris and waste shall be removed from the campus grounds. Use of the University trash containers will not be permitted.

9.8.4.1.2 Removal of all stains, smears, marks of any kind from surfaces including existing surfaces if said damage is the result of the work.

9.8.4.1.3 Removal of all temporary structures and barricades.

9.10. FINAL COMPLETION AND FINAL PAYMENT

9.10.2.1 Insert in the first line “Contractors Affidavit of Completion, Payment of Debts and Claims and Release of Liens” in lieu of “Affadavit on Behalf of Contractor”.

9.10.2.4 Insert in the first line after the word “(Form 103)”: “for contracts greater than or equal to \$50,000”

ARTICLE 10 – PROTECTIONS OF PERSONS AND PROPERTY

10.2. SAFETY OF PERSONS AND PROPERTY

10.2.3 Insert in the second line after the word “Contract”: “and as approved by Owner.”

10.2.3.1 The Contractor recognizes that the Work will be conducted in and around buildings and areas that are occupied and will continue to function for the purposes of the University. The Contractor shall conduct a project safety meeting prior to the start of the Work, with the Owner’s representative and all others that the Owner’s representative deems necessary. The purpose of the meeting shall be to produce project specific rules and guidelines pertaining to but not restricted to: safety of persons in and around the area of the Work including type and location of fencing, guards, signage, etc.; closing of existing campus circulation routes and designation of alternate routes, including creation of temporary routes of access as required; creation and location of temporary signage as required to maintain accessible routes for handicapped access to and around the site of the Work. The Contractor shall be solely responsible for implementing all required means and methods for site safety and security that may be agreed upon in this meeting.

10.2.3.2 Contractor shall notify Owner any time his operations will disrupt use of and access to existing accessible routes. Contractor is solely responsible for maintaining existing accessible routes in the area of the project with the exception of temporary interruptions lasting one day or less. Contractor is responsible for

erecting signage identifying temporary re-routing of accessible routes. Such re-routing shall be coordinated with Owner in advance.

10.8. UTILITIES

10.8.1 Underground Utilities: Buried utilities, including, but not limited to, electricity, gas, steam, air, water, telephone, sewer, irrigation, broadband coaxial computer cable, and fiber optic cables are very vulnerable and damage could result in loss of service. The telephone, broadband and fiber optic cables are especially sensitive and the slightest damage to these components will result in disruption of the operations of the campus.

10.8.2 Facilities Services must be notified by phone and in writing at least 72 hours (3 business days) prior to digging to arrange and assist in the location of buried utilities in the field. Please contact (406) 994-5455 or (406) 994-2107. The contractor shall mark the boundary of the work area. The boundary area shall be indicated with white paint and white flags. In Winter, pink paint and flags will be accepted.

10.8.3 After Facilities Services has indicated to the Contractor that buried utilities have been located, the Contractor shall be responsible for any utilities damaged while digging within the areas marked as locations of utilities. Such responsibility shall include all necessary care including hand digging. Contractor's responsibility shall also include maintaining markings after initial locate. The area for such responsibility, unless otherwise indicated, shall extend 18 inches to either side of the marked center line of a buried utility line. In cases of multiple or overlapping utilities or inconclusive electronic locating signals, Facilities Services may specifically indicate a wider area for Contractor's responsibility.

10.8.4 The Contractor's responsibility shall include repair or replacement of damaged utilities. In the event of damage to the 15 KV electrical distribution system, the broadband or fiber optic cables, repair will consist of replacement from termination to termination. Facilities Services and the MSU Information Technology Center will verify repair and recertification. The Contractor will also be responsible for all costs associated with reterminations and recertification.

10.8.5 Any buried utilities exposed by the operations of the Contractor shall be marked on the plans and adequately protected by the Contractor. If any buried utilities not located by Facilities Services are exposed, the Contractor shall immediately contact Facilities Services at the numbers above. If, after exposing an unlocated buried utility, the Contractor continues digging without notifying Facilities Services and further damages the utility, the Contractor will be responsible.

10.8.6 Damage to irrigation systems during seasons of no irrigation that are not immediately and adequately repaired and tested will require the Contractor to return when the system is in service to complete the repair.

10.8.7 In the event of a planned interruption of any existing utility service, the Contractor shall make arrangements with Facilities Services at least 72 hours (3 business days) in advance. Shutdowns of the broadband or fiber optic cables will normally require 5 working days notice to Facilities Services and the Information Technology Center. The Contractor shall bear all costs associated with the interruptions and restorations of service.

ARTICLE 11 - INSURANCE AND BONDS

11.4. COMMERCIAL GENERAL LIABILITY INSURANCE

11.4.1.3. Insert in the first line after “State of Montana”: “, Montana State University”.

11.7. PERFORMANCE BOND AND LABOR & MATERIAL PAYMENT BOND (BOTH ARE REQUIRED ON THIS PROJECT)

11.7.1. Insert in the first line at the beginning of the sentence “For contracts equal to or greater than \$50,000”.

11.8. CANCELLATION

11.8 All Certificates shall contain a provision that coverage provided by the policies will not be cancelled without at least thirty (30) days prior notice to the Owner.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1. GOVERNING LAW

13.1.1. Insert in the second line “The Eighteenth Judicial District, Gallatin County” in lieu of “First Judicial District, Lewis and Clark County”.

END OF SUPPLEMENTARY GENERAL CONDITIONS

Attachment F – Uncontrolled Exposure FCC Calculations
Attachment G – Contact List for Licensee
Attachment H – Structural Design
Attachment I – Electrical Design
Attachment J – Hazardous Material Scope of Work

Exhibit B

**Commercial Non University Application for Telecommunications Antenna and Apparatus Siting
on Montana State University–Bozeman Property**

1. Name and Address of Applicant:

2. Contact Person for Applicant:

Name: _____

Phone: _____

Email Address: _____

3. Desired location for siting:

4. Description of Equipment to be placed on university property:

5. Description of space requirements, utilities, communications linkages, and other services and equipment that will be required for the siting:

6. Broadcast frequency: TX and RX. Submit required Intermodulation Harmonic Frequency Study with all MSU frequencies.

7. Proposed Work Plan: Describe applicant's proposed schedule for installation with details of work to be done and proposed dates of completion of each work item.

8. Proposed Effective Date and Duration of License:

On behalf of the applicant, I certify that the applicant has read the MSU Telecommunications Antenna/Tower Siting Policy and the TELECOMMUNICATIONS ANTENNA AND APPARATUS SITE LICENSE and the applicant agrees to comply.

Applicant Date

If the applicant wishes to negotiate a variation to the MODEL TELECOMMUNICATIONS ANTENNA AND APPARATUS SITE LICENSE, please set forth the proposed revisions and the reasons that the variation is being requested.

RETURN TO University Planner, Facilities Planning, Design and Construction

Copies of the application will be distributed to ITC, MontanaPBS-KUSM, Auxiliary Services

Exhibit C

**On-Campus User Application for Telecommunications Antenna and Apparatus Siting
on Montana State University–Bozeman Property**

1. Department : _____ **Date:** _____

2. Contact Person for User:

Name: _____

Phone: _____

Email Address: _____

3. Desired location for siting: _____

Attach drawings/maps showing all equipment location

4. Description of Equipment to be placed on university property: (Attach pictures and product description)

5. Description of space requirements, utilities, communications linkages, and other services and equipment that will be required for the siting: (Attach detail information)

6. Broadcast frequency: TX and RX Intermodulation Harmonic Frequency Study comparing your frequencies with all MSU/MAES frequencies is required.

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7. Proposed Work Plan: Describe applicant's proposed schedule for installation with details of work to be done, who will do the work, and proposed dates of completion of each work item.

8. Proposed Effective Date and Duration of Use:

On behalf of the applicant, I certify that the applicant has read the MSU Telecommunications Antenna/Tower Siting Policy and the applicant agrees to comply.

Applicant Date

Department Head Date

Dean Date

RETURN TO University Planner, Facilities Planning, Design and Construction

Copies of the application will be distributed to ITC, MontanaPBS-KUSM, Auxiliary Services