

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

- WHEREAS,** pursuant to Resolution No. 01-96-011, the Tribal Council of the White Mountain Apache Tribe authorized the Hon-Dah Casino Primary Management Official at that time, the late Mike Lauf, to proceed with plans for expansion of the Hon-Dah Complex to include a hotel, convention center, golf course, and to seek funding sources for these projects; and
- WHEREAS,** pursuant to Resolution No. 08-96-185, the Tribal Council approved proceeding with the project in phases, the first phase to be conducted during the fall of 1996, which included the earth work and utilities and other underground work for the hotel and convention center, and additional parking spaces for the convention center; and
- WHEREAS,** the first phase of the project was successfully completed on schedule, and the second phase, which includes completion of the hotel and convention center, is scheduled to commence this spring; and
- WHEREAS,** the Tribal Council understands that the Tribe's Legal Department has negotiated the attached contract (Attachment 1) for the construction of the hotel and convention center that is contingent on the Tribe securing financing at terms satisfactory to the Tribe; and
- WHEREAS,** the Tribal Council understands that short-term financing for the hotel and convention center project has been offered to the Tribe by the Wells Fargo Bank, in the form of an unsecured loan in the amount of nine million dollars (\$9,000,000) over the next twelve months; and
- WHEREAS,** the Tribal Council understands that the short-term financing arrangement with Wells Fargo Bank will be converted to long-term financing, either with Wells Fargo Bank or another lending institution, on terms most favorable to the Tribe; and
- WHEREAS,** the Tribal Council understands that convention center construction costs will be separately accounted for to ensure that the Tribe can benefit from tax-exempt financing on the convention center, including that portion financed by short-term financing; and
- WHEREAS,** the Tribal Council understands construction of the hotel and convention center must commence this spring to stay on schedule and to ensure a fully operational convention center and hotel facility in time for the 1997 Christmas season.

**Resolution No. 03-97-051**

**BE IT RESOLVED**, by the Tribal Council of the White Mountain Apache Tribe, that it hereby authorizes and directs the Tribal Chairman, and in his absence the Tribal Vice Chairman, to enter into the attached contract (Attachment 1) for the construction of the Hon-Dah Hotel and Convention Center Project.

**FURTHER RESOLVED** by the Tribal Council the White Mountain Apache Tribe that it hereby authorizes and directs the Tribal Chairman, and in his absence the Tribal Vice Chairman, to secure short-term financing in the form of a nine million dollar (\$9,000,000) unsecured loan from Wells Fargo Bank, and to secure long-term financing for such a loan on terms most favorable to the White Mountain Apache Tribe.

The foregoing resolution was on March 13, 1997, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by the White Mountain Apache Tribal Constitution, including Article IV, Sections 1 (a), (b), (h), (i), (j), (l), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe on September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
\_\_\_\_\_  
Chairman of the Tribal Council

  
\_\_\_\_\_  
Secretary of the Tribal Council



# STANDARD FORM OF AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

*This Document has important legal and insurance consequences; consultation with an attorney and insurance consultants and camers is encouraged with respect to its completion or modification.*

## AGREEMENT

Entered into and effective as of the 13<sup>TH</sup> day of March, 1997.

## BETWEEN

WHITE MOUNTAIN APACHE TRIBE                      the Owner, and  
P.O. Box 700  
Whiteriver, Arizona 85941

BFL CONSTRUCTION COMPANY, INC.                      the Contractor.  
140 South Euclid Avenue  
Tucson, Arizona 85719

For services in connection with the following Project:

The Project covered by this Agreement is limited to the construction of a 19,887 square foot convention center and a 99,282 square foot, 126 room hotel. The wood frame building with a wood roof will be located at the intersection of Highway 73 and Highway 260 on the Fort Apache Indian Reservation.

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The Owner and the Contractor agree as set forth below:

## ARTICLE 1

### Parties, Definitions and Extent of Agreement

**1.1 THE CONTRACTOR:** The Contractor accepts the relationship of trust and confidence established between the Contractor and the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and to utilize the Contractor's skill, judgement, and diligent efforts meeting or exceeding industry standards in furthering the interest of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times adequate supply of workers and material; and to perform the work in the best way and most expeditious and economical manner consistent with the interests of the Owner.

**1.2 THE CONSTRUCTION TEAM:** The Contractor, the Owner and the Architect, called the "Construction Team", shall work together from the beginning through termination of this Agreement.

**1.2.1 Architect:** The Owner shall furnish the services of the following Architect:

Stan Schuman, Architect  
345 East Toole Avenue, #202  
Tucson, Arizona 85701  
(520) 629-9752

**1.3 EXTENT OF AGREEMENT:** This Agreement represents the entire agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements. When the documents identified by Exhibits A, B, C, D, E, F, & G are completed, they shall be incorporated into and become a part of this Agreement. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both the Owner and the Contractor.

**1.4 DEFINITIONS:** The "Project" is the total construction of the work required by the Final Drawings and Specifications. The term "day" shall mean calendar day unless otherwise specifically designated.

**1.5 TRIBAL EMPLOYMENT RIGHTS OFFICE:** The Contractor represents to the Owner that the Contractor has reviewed and understands the Owner's employment laws and policies. The Contractor shall abide by all such laws and policies, as well as any applicable new, amended, or modified laws and policies enacted by the Owner before termination of this Agreement, except that if any new, amended, or modified laws and policies enacted by the Owner after the date of this Agreement results in additional costs to the Contractor the GMP will be increased accordingly. In addition, the following documents (Attachments I - 10) are made part of this contract and the Contractor will abide by the rules and regulations contained therein.

- Attachment 1: Compliance with Tribal Labor Code and TERO Rules & Regulations dated March 13, 1995
- Attachment 2: Tribal Employment Rights Office Requirements
- Attachment 3: Tribal Fees Payment Agreement
- Attachment 4: Things to consider while working on the Fort Apache Indian Reservation of the White Mountain Apache Tribe
- Attachment 5: Sexual Discrimination in Hiring and Employment dated April 12, 1995
- Attachment 6: Fire and Rescue Requirements of the Contractors dated July 20, 1994
- Attachment 7: Resolution of the White Mountain Apache Tribe Of the Fort Apache Indian Reservation #11-95-349, Hiring Preferences, dated November 9, 1995
- Attachment 8: White Mountain Apache Labor Code
- Attachment 9: Amendment to the White Mountain Apache Tribe Of the Fort Apache Indian Reservation Labor Code
- Attachment 10: Resolution of the White Mountain Apache Tribe Of the Fort Apache Indian Reservation # 02-90-47 dated February 22, 1990.

## ARTICLE 2

### **Contractor's Responsibilities**

#### **2.1 CONTRACTOR'S PRECONSTRUCTION SERVICES:**

**2.1.1 Preliminary Evaluation:** The Contractor shall provide for the Owner's review and approval a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

**2.1.2 Consultation:** The Contractor shall schedule and attend regular meetings with the Owner and the Architect. The Contractor shall consult with the Owner and the Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion, and factors related to construction cost including estimates of alternative designs and materials, comparison pricing of system components, preliminary budgets and possible economics.

**2.1.3 Preliminary Cost Estimates:** When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Contractor shall prepare, for review by the Architect and review and approval by the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques. Additionally, the Contractor shall bid intent of drawings with Subcontractors of major trades.

**2.1.4 Schematic Design Estimate:** When schematic design documents have been prepared by the Architect and approved by the Owner, the Contractor shall prepare for review by the Architect and review and approval by the Owner, a more detailed cost estimate, with supporting data. This estimate will form the basis of the Owner's budget for the Project, which shall be used by the Contractor and Architect in the preparation of the Design Development Drawings Package.

**2.1.5 Design Development Documents Estimate; Guaranteed Maximum Price:** During the preparation of the Design Development Drawings Package, the Contractor shall update and refine the budget estimate at intervals determined by the Contractor or as otherwise requested by the Owner. The Contractor shall seek proposals on all remaining sub trades from subcontractors who have been pre-qualified by the Contractor, the Architect, and the Owner. When completed by the Architect and approved by the Owner, the Design Development Drawings Package shall be incorporated into this Agreement as Exhibit A. The Contractor shall then prepare a detailed estimate, with supporting data, of the Guaranteed Maximum Price ("GMP") for the complete construction of the Project for review by the Architect, and review and approval by the Owner. The GMP shall be established in accordance with Paragraph 6.1 of this Agreement. If, for any reason, the Owner does not approve the GMP, the Owner may, in its sole discretion, either (1) request that the Contractor prepare a revised GMP addressing the Owner's concerns, or (2) terminate this Agreement. If the Owner terminates this Agreement, the Contractor shall be compensated as provided in paragraph 11.1.1, and for costs of its personnel as provided in Paragraph 8.2.1 through Paragraph 8.2.4. If the GMP is approved by the Owner, it shall be incorporated into this Agreement as Exhibit B. As set forth more fully in this Agreement, the GMP shall establish the maximum price the Owner shall be required to pay the Contractor for the Contractor's full performance of its obligations under this Agreement subject to Articles 6 and 9.

**2.1.6 Preliminary Project Schedule:** When the Design Development Drawings Package and GMP are completed, the Contractor shall prepare for the Owner's review and approval a preliminary project schedule for the complete construction of the Project. The preliminary schedule shall include a date of Substantial Completion for the Project. The Contractor shall integrate the schedule with the service and activities of the Owner, proposed activity sequences, phasing and durations milestone dates, the Owner's occupancy requirements, and the proposed date of Substantial Completion.

**2.1.7 Construction before Final Drawings and Specifications:** Upon completion and approval of both the Design Development and Drawings Package and the GMP in accordance with Paragraph 2.1.5 of this Agreement, the Owner may, in its sole discretion, approve in writing the commencement of construction activities at the Project Site before the Final Drawings and Specifications and Schedule are completed in accordance with

Paragraph 2.1.8 of this Agreement. Work shall be performed by the Contractor, or the Contractor's subcontractors or material suppliers, only to the extent authorized in accordance with this Paragraph. The Owner's written authorization to commence construction activities under this Paragraph shall be incorporated into this Agreement as Exhibit C.

**2.1.8 Construction Documents/Schedule:** When the Owner is ready to proceed with developing the Final Drawings and Specifications for the Project, the Architect and the Contractor shall coordinate their efforts to ensure that the construction documents remain consistent with the agreed upon assumptions in the Design Development Drawings Package. The Owner shall authorize and cause the Architect to revise the drawings and specifications to the extent necessary to maintain these agreed upon assumptions upon which the GMP was based. The GMP for the entire Project and the date of substantial completion for the Project shall be subject to additions and deductions by the Owner. When the Final Drawings and Specifications are completed, and a final time schedule for the construction (the "Schedule") is established, the Final Drawings and Specifications and the Schedule shall be submitted to the Owner for review and approval. Upon the Owner's and Contractor's approval, such documents shall be incorporated into this Agreement as Exhibit D. If, for any reason, the Owner does not approve the Final Drawings and Specifications, or the Schedule, the Owner may, in its sole discretion, either (1) request that the Architect prepare revised Final Drawings and Specifications, or that the Contractor prepare a revised Schedule, addressing the Owner's concerns, or (2) terminate this Agreement. If the Owner terminates this Agreement, the Contractor shall be compensated as provided in Paragraph 11.1.1 and for its cost of personnel as provided in Paragraph 8.2.

**2.1.9 Notice of Defects:** If the Contractor becomes aware of any error, inconsistency, or omission which it discovers in the Final Drawings and Specifications or any fault or defect in the Project or non-conformance with the Final Drawings and Specifications, the Contractor shall give written notice thereof promptly following its discovery. If the Contractor is responsible, or if the Contractor fails to notify the Owner in accordance with this Paragraph, the Contractor shall bare the costs of correction that are in excess of the GMP. If the Contractor is not responsible and the costs of correction exceed the GMP, the GMP shall be adjusted based on the costs of correction.

**2.1.10 Schedule of Values:** The Contractor shall, when presenting its GMP, prepare and submit to the Owner for review and approval a schedule of values for the various segments of the work upon which the Contractor's progress payments will be based. The schedule of values shall be based upon the Contractor's estimated costs for each segment of work listed, and shall be revised periodically by the Contractor to reflect the current status of the Contractor's cost estimates, provided, however, that changes in cost estimates shall not effect the GMP except as provided in Article 9 of this Agreement.

## **2.2 RESPONSIBILITIES WITH RESPECT TO CONSTRUCTION:**

**2.2.1 Contractor Undertakings:** The Contractor shall provide all services, expertise, and equipment required for complete performance of this Agreement, including, but not limited to, construction supervision, labor, materials, tools, construction equipment, and



subcontracted items necessary for the execution and completion of the Project.

**2.2.2 Schedule:** The final Schedule which the Contractor shall prepare and submit to the Owner pursuant to Paragraph 2.1.7 of this Agreement shall indicate the dates for starting and completion of the various stages of construction as set forth in Paragraph 2.1.6 of this Agreement. The Schedule shall be revised periodically as required by the conditions of the work as well as for those conditions and events which are grounds for extensions of the Schedule pursuant to Paragraph 5.3 of this Agreement.

**2.2.3 Debris:** The Contractor shall at all times keep the Project Site free of accumulation of waste materials, rubbish or other debris caused by or resulting from the Project. At the completion of the work, the Contractor shall remove all waste material and rubbish from and around the Project, as well as all tools, construction equipment, machinery and surplus materials.

**2.2.4 Owner's Ongoing Business.** The Contractor understands that the Owner will be conducting business adjacent to the Project Site, and shall use best efforts to avoid interfering with such business. The Contractor and the Owner shall work together to ensure that interference with the Owner's ongoing business is minimized to the greatest extent possible through the identification of appropriate staging areas for the work covered by this Agreement, including areas to accept deliveries of materials and store and use equipment. Subject to approval by the Owner, the Contractor shall designate areas where vehicles used in connection with the Project shall be parked, including but not limited to vehicles driven to the Project Site by Contractor and Subcontractor employees.

**2.2.5 Law Compliance:** The Contractor shall give all notices and comply with all applicable laws and ordinances legally enacted at any time prior to final completion of the Project. The GMP shall be adjusted to include any additional costs that the Contractor incurs for compliance with any applicable laws and ordinances legally enacted by the Owner after execution of this Agreement.

**2.2.6 Safety:** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project, and shall comply with all applicable provisions of safety laws to prevent accidents or injury to persons on, about or adjacent to the Project Site. The Contractor shall erect and properly maintain, at all times, as required by the conditions and progress of work, reasonable safeguards for the protection of workmen and the public. The Contractor shall designate a responsible member of its organization at the Project Site to act as the Contractor's Safety Officer, whose duty shall be the prevention of accidents. The person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor to the Owner and the Architect. It is understood and agreed, however, that the Contractor shall have no responsibility for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project Site carried on by other persons or firms directly employed by the Owner as separate contractors. The Contractor shall give the Owner notice of any such safety hazard and the Owner agrees to cause any such separate contractors to abide by and fully adhere to all applicable provisions of safety laws and regulations and to comply with all reasonable requests and directions of the Contractor for the elimination or abatement of any such safety hazards at the Project Site.

**2.2.7 Records:** The Contractor shall keep and maintain full and detailed records as may be necessary for proper management under this Agreement. The Owner will be afforded access at all reasonable times to the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, purchase orders, subcontracts, delivery tickets, canceled checks memoranda, and similar material relating to this Agreement. The Contractor shall preserve all such records for a period of six (6) calendar years after the year in which the Project is completed or longer where required by law.

### **2.3 WARRANTIES AND COMPLETION:**

**2.3.1 Materials and Equipment:** The Contractor warrants to the Owner that all materials and equipment furnished under this Agreement will be new (unless otherwise specified) and properly functioning, and that all work will be of good quality, free from improper workmanship and defective materials, and in conformance with the Final Drawings and Specifications and applicable building codes, laws, rules, and regulations. The Contractor agrees to correct all improper workmanship and defective materials within a period of one (1) year from the Date of Substantial Completion as defined in Paragraph 5.2, or for such longer periods of time as may be otherwise required by law or set forth with respect to specific warranties contained in the Specifications. The Owner shall give notice to the Contractor within a reasonable time, under the circumstances, after discovery of any such condition.

**2.3.2 Test Certificates:** Prior to substantial completion of the Project, the Contractor shall secure all required certificates of inspection, testing and approval and deliver them to the Owner.

**2.3.3 Warranties:** Prior to final completion of the Project and final payment to the Contractor, the Contractor shall collect all written warranties and equipment manuals and deliver an original and one copy of them, properly indexed in three-ring binder notebooks, to the Owner along with a complete set of Mylar As-Built drawings.

**2.3.4 Utilities:** Prior to final completion of the Project and final payment to the Contractor, the Contractor, with the assistance of the Owner's maintenance personnel, shall direct the checkout of utilities and operations of systems and equipment for readiness, and shall assist in their initial start-up and testing until such utilities and systems are operating fully and properly.

## **ARTICLE 3**

### **Owner's Responsibilities**

**3.1 TRIBAL RESOLUTION:** The Owner shall provide the Contractor with a copy of a Resolution adopted by the Tribal Council of the White Mountain Apache Tribe which authorizes this Project and the execution of this Agreement by the Chairman of the Tribal Council.

**3.2 OWNER'S REPRESENTATIONS:** The Owner has designated Roger Leslie, General

Manager, as its representative who shall be fully acquainted with the Project, and who has authority to approve changes in the scope of the Project, render decisions called for by this Agreement promptly, and furnish information expeditiously and in time to meet dates set forth and agreed upon during project development within Article 2. The Contractor shall give written notice to the Owner if the Contractor asserts that the Owner has failed to make decisions in a timely manner.

**3.3 PROJECT INFORMATION:** The Owner shall provide the Contractor with all information in Owner's possession or reasonably in its control that relates to the Owner's requirements for the Project.

**3.4 PROPERTY INFORMATION:** The Owner shall provide all information on ownership, legal description, and construction lender required in Exhibit F Section II.

**3.5 SURVEYS, TESTS:** The Owner shall furnish for the Project Site all necessary surveys describing the physical characteristics, soils reports and subsurface investigations, legal limitations, utility locations, and a legal description.

**3.6 EASEMENTS:** The Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

**3.7 NOTICE OF DEFECTS:** If the Owner becomes aware of any error, inconsistency, or omission, which it discovers in the Final Drawings and Specifications or any fault or defect in the Project or non-conformance with the Final Drawings and Specifications, the Owner shall give written notice thereof promptly following its discovery. If the Contractor is responsible, the Contractor shall bare the costs of correction that are in excess of the GMP. If the Contractor is not responsible and if the costs of correction exceed the GMP, the GMP shall be adjusted based on the costs of the correction. The Owner's failure to provide notice to the Contractor under this Paragraph shall not be deemed a release or waiver of the Contractor's liability for such faults, defects, or non-conformance.

**3.8 OWNER'S INSURANCE:** The Owner shall provide insurance as provided in Paragraph 12.3.

**3.9 RELIANCE:** The services and information required by Article 3 of this Agreement shall be furnished within a reasonable time at the Owner's expense and the Contractor shall be entitled to reasonably rely upon the accuracy and the completeness thereof.

**3.10 RELATIONSHIP:** The Owner shall not have contractual obligation to or relationship with the Contractor's Subcontractors relating to this Project, and shall, unless impracticable under the circumstances, communicate with such Subcontractors only through the Contractor. Promptly following such communication the Owner shall notify the Contractor.

## ARTICLE 4

### **Subcontractors and Material Suppliers**

**4.1 SUBCONTRACTS:** All portions of the Work that the Contractor does not perform with his own forces shall be performed under subcontracts for which the Contractor shall be fully responsible.

**4.2 DEFINITION:** A Subcontractor is a person or entity who is properly licensed by the Arizona Registrar of Contractors and who has a direct contract with the Contractor to perform any work in connection with the Project. The term Subcontractor does not include any separate contractor employed by the Owner or the separate contractor's subcontractors.

**4.3 CONTRACTUAL RELATIONSHIP:** No contractual relationship shall exist between the Owner and any Subcontractor or Material Supplier relating to this Project. The Contractor shall be responsible for the management of the Subcontractors and Material Suppliers, and the performance of their work. The Contractor shall supply the Owner and the Architect with copies of all contracts with Subcontractors and all purchase orders for materials supplied to the Contractor for the Project.

**4.4 LIENS:** If any mechanics or materialmen's liens or claims therefore or any order for the payment of money shall be filed against the property by reason arising out of any labor or material furnished or alleged to have been furnished or to be furnished to the Project, the Contractor shall cause the same to be released, canceled, and discharged of record, by bond or otherwise as allowed by law at the Contractor's sole cost and expense, within thirty (30) days after the date of filing of any such lien. The Contractor shall satisfy and discharge any judgments entered against the Owner and indemnify and hold harmless the Owner from any claim or damage resulting therefrom. The Contractor shall undertake the costs of defending the Owner against any such claims or damage, including reasonable attorneys' fees and costs. Until the Contractor has caused such lien or order for payment to be canceled and discharged of record, by bond or otherwise allowed by law, the Owner may withhold that portion of any payment then due equal to one hundred and fifty percent (150%) of that amount owed to Subcontractors or material suppliers for which liens or claims of lien have been recorded.

## ARTICLE 5

### **Contract Time Schedule**

**5.1 COMMENCEMENT & COMPLETION:** The Preconstruction Services shall be commenced upon execution of this Agreement. For aspects of construction of the Project not already commenced pursuant to Paragraph 2.1.7 of this Agreement, construction of the Project to be built under this Agreement shall commence within seven (7) days of the following: 1) approval by the Owner and Contractor of the Final Plans and Specifications, the Schedule, and the GMP, if revised and 2) issuance of Notice To Proceed by the Owner. The construction work shall be substantially complete on the date identified in the

Notice To Proceed (Exhibit E), subject to extensions of time permitted under Paragraph 5.3 of this Agreement.

**5.2 SUBSTANTIAL COMPLETION:** The date of Substantial Completion is the date when construction is sufficiently complete in accordance with the Final Drawings and Specifications as certified in writing by the Architect to the Owner. Warranties called for by this Agreement or by the Final Drawings and Specifications shall commence on the date of Substantial Completion of the Project. This date shall be established by a Certificate of Substantial Completion signed by the Architect, the Owner and the Contractor which shall also establish the Owner's responsibilities for security, maintenance, utilities, damage to the work and insurance. This Certificate shall also list the items to be completed or corrected by the Contractor, and fix the time for their completion and correction in accordance with Paragraph 11.2.2 of this Agreement.

**5.3 TIME EXTENSIONS:** If the Contractor is delayed at any time in the progress of any phase of the Project by any act or neglect of the Owner or by any separate contractor employed by the Owner, or by Change Order in the Project, or by labor disputes, fire, unusual delay in delivery of materials, transportation, adverse weather conditions that delay the Schedule, unavoidable casualties, or any other causes beyond the Contractor's reasonable control as certified by the Architect, then the date for Substantial Completion for that phase shall be extended by Change Order for the period of time caused by such delay.

## ARTICLE 6

### **Contract Sum**

**6.1 GMP:** As set forth in Paragraph 2.1.5 of this Agreement, after the Design Development Drawings Package is completed, the Contractor shall establish the proposed GMP and deliver it to the Owner for review and approval. The GMP shall be based upon the Contractor's preconstruction estimate of the costs of the project as set forth for items listed in Article 8, plus the Contractor's Compensation calculated pursuant to Article 7 of this Agreement. The GMP shall be developed in cooperation with the Architect. Once the GMP is approved in writing by the Owner, it shall be incorporated into this Agreement as Exhibit B. The Contractor, per the terms of this Agreement, guarantees to complete the Project through completion for a total sum not to exceed this GMP, except as hereinafter set forth.

**6.2 BASIS OF GMP:** The GMP is based upon applicable laws, codes, and regulations in existence at the date of its establishment and upon criteria, drawings, and specifications as set forth in the completed Design Development Drawings Package (Exhibit A).

**6.3 CHANGES IN THE GMP:** The exclusive mechanism for modifying the GMP is pursuant to Article 9 of this Agreement.

**6.4 ALLOWANCES:** The GMP may be based upon certain allowances specifically agreed upon in writing by the Owner. Such allowances shall be set forth in Exhibit B. Whenever

the actual cost of an approved allowance is more than or less than the allowance, the GMP shall be adjusted accordingly pursuant to Article 9 of this Agreement.

**6.5 SAVINGS:** At the completion of the Project, in the event the Actual Costs of the Project, as defined in Article 8, plus the Contractor's Compensation, as defined in Article 7, total less than the GMP, 100% of the resulting savings shall go to the Owner. The Contractor shall pay all Actual Costs of the Project that, when added to the Contractor's Compensation, exceed the GMP.

## ARTICLE 7

### Contractor's Compensation

**7.1 COMPENSATION:** As complete consideration for the Contractor's full and satisfactory performance of its obligations under this Agreement, the Owner agrees to pay to the Contractor a fee of Four and one quarter percent (4.25%) of the Costs of the Project, as determined at the completion of the Design Development Drawings Package as provided in paragraph 2.1.5 of this Agreement, less the Contractor's Compensation (\$75,000) and Pre-Construction payments (\$10,000) paid for by the Owner to the Contractor under the August 19, 1996 Agreement for Phase I of the Project, and less the Pre-Construction payments made by the Owner to the Contractor under Paragraph 11.1.1 of this Agreement, as full compensation for the Contractor's services. The Contractor's Compensation shall be established as a fixed dollar amount within the GMP and shall not be subject to reduction if the cost of the Project and the fee are less than the GMP.

**7.1.1 Payments:** The Contractor's Compensation shall be paid monthly in accordance with Article 11 of this Agreement.

**7.2 ADDITIONAL FEE:** In the event of an insured loss of significant value which causes a material change to the Schedule due to delays and re-construction, the Contractor shall be paid an additional fee in the same proportion as set forth in 7.1, but only to the extent that such fee is considered an expense of construction and paid by the insurer.

**7.3 ITEMS INCLUDED IN THE CONTRACTOR'S COMPENSATION:** The Contractor's Compensation as calculated in Paragraph 7.1 of this Agreement shall constitute full compensation from the Owner to the Contractor for the Contractor's performance of this Agreement, and shall cover all of the Contractor's costs, principle office overhead, and profits. These items include, but are not limited to, items identified in the following Paragraphs 7.3.1 through 7.3.7. Such items shall not be included in the Actual Costs of the Project computed pursuant to Article 8 of this Agreement.

**7.3.1 Overhead:** All general operating expenses of the Contractor's principal office.

**7.3.2 Capital Expenses:** Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Project.

**7.3.3 General Expenses:** General expenses including salaries, except as may be expressly included in Article 8.

**7.3.4 Contractor's Negligence:** Those costs in excess of the GMP, due to the fault or negligence of the Contractor, Subcontractors, or anyone directly or indirectly employed by them including, but not limited to, costs for correction of damaged, defective, or non-conforming work, disposal or replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming a part of the work.

**7.3.5 Excess Costs:** Costs in excess of the GMP.

**7.3.6 Project Manager:** All costs of the Project Manager's salary and burden except as may be expressly included in Article 8.2.4.

## ARTICLE 8

### Actual Costs of the Project

**8.1 DEFINITIONS:** The Owner agrees to pay the Contractor for those Actual Costs of the Project that, when combined with the Contractor's Compensation, do not exceed the GMP. The term "Actual Costs of the Project" shall mean those costs necessarily incurred and paid by the Contractor in the design and construction of the Project, set forth in this Article 8. The Actual Costs of the Project do not include the Contractor's Compensation set forth in Article 7.

#### **8.2 COST ITEMS:**

**8.2.1 Salaries:** At a rate and for persons agreed to in writing by the Owner, salaries or wages paid for the Contractor's employees in the performance of the Contractor's obligations under this Agreement, in whatever capacity employed, including such welfare or other benefits as may be payable with respect thereto per Paragraph 8.2.2, or other rates as agreed to by the Owner and the Contractor identified in Paragraph 8.2.3.

**8.2.2 Burden:** Costs incurred and paid by the Contractor for taxes, insurance, contributions, assessments, and customary benefits such as sick leave, medical and health benefits, holidays, vacation, pensions, per diem, mileage, and accommodations, provided such costs are based on wages and salaries covered by Paragraph 8.2.1.

**8.2.3 Rates:** The following personnel, when performing work on this Project, will be billed at the following rates. These rates include all employee costs covered by Paragraphs 8.2.1 and 8.2.2.

a.	Project Superintendent	Jim Casebolt	\$61.00/hour
b.	Site Project Admin.	(to be identified)	\$13.00/hour
c.	Laborers	(to be identified)	\$13.00/hour

**8.2.4 Travel:** That portion of the reasonable travel, subsistence, and accommodation expenses of the Contractor's personnel, including the Contractor's Project Manager, incurred while traveling and/or discharging the Contractor's duties under this Agreement.

**8.2.5 Materials, Supplies, and Equipment:** Cost of all materials, supplies, equipment,

and temporary facilities necessary to perform the Contractor's obligations under this Agreement, including costs of transportation, maintenance, and storage thereof, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the Project Site and fully consumed whether sold to others or retained by the Contractor. Costs for such items previously used by the Contractor shall mean fair market value.

**8.2.6 Subcontractor Payments:** Payments made by the Contractor to Subcontractors for work performed pursuant to contracts entered into by the Contractor and Subcontractors to discharge the Contractor's obligations under this Agreement, provided that such Subcontractors have been approved by the Owner in accordance with Paragraph 2.1.5 of this Agreement.

**8.2.7 Rentals:** Rental charges of all necessary machinery and equipment used at the Project Site, whether rented from the Contractor (at prevailing market rate) or others, including installations, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area.

**8.2.8 Insurance:** That portion of the cost of the premiums for all insurance and bonds which are directly attributable to this Contract.

**8.2.9 Taxes:** Sales, use, gross receipts or similar taxes for which the Contractor is liable as a direct result of the Contractor's performance under this Agreement.

**8.2.10 Permits and Tests:** Permit fees, State Health fee's and costs, licenses and tests.

**8.2.11 Miscellaneous:** Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project Site, faxing, expressage, and other services required in connection with the Project.

**8.2.12 Uninsured Losses:** Losses, expenses or damages to the extent not compensated by insurance (so long as the Contractor maintains all required insurance coverages) or otherwise (including settlement made with the written approval of the Owner), and the cost of corrective work. For any occurrence which is covered by Paragraph 12.4.1 of this Agreement but which is less than the applicable deductible for the occurrence, the occurrence shall be a Cost of the Project so long as the total sum of all such occurrences for the Project is less than ten thousand dollars (\$10,000). If the total sum of such occurrences exceeds ten thousand dollars (\$10,000), the GMP shall be adjusted accordingly.

**8.2.13 Cleanup:** Cost of removal of all debris.

**8.2.14 Emergency Costs:** Costs incurred due to an emergency affecting the safety of persons and property.

**8.2.15 Reproductions:** Costs of reproduction of all documents, manuals and blueprints.

**8.2.16 Other Costs:** All costs directly incurred in the performance of the Project and not



included in the Contractor's Compensation as set forth in paragraph 7.3 if and to the extent approved in writing by the Owner.

## ARTICLE 9

### Changes in the Project

**9.1 DEFINITION:** The Owner, without invalidating this Agreement, may order Changes in the Project within the general scope of this Agreement. Changes in the Project consist of additions, deletions and other modifications to the Project. The GMP and the Schedule shall be adjusted in accordance with paragraph 9.1.2 of this Agreement. All such Changes in the Project must be authorized by the Owner and the Architect in writing through a Change Order.

**9.1.1 Change Order:** A Change Order is a written order to the Contractor signed by the Owner, Contractor, and the Architect or their authorized agents and issued after the execution of this Agreement, authorizing a Change in the Project and/or an adjustment in the GMP or the Schedule.

**9.1.2 Methods of Determination:** The increase or decrease in the GMP resulting from a Change Order shall be determined in one of the following ways:

**9.1.2.1 Mutual Agreement:** By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

**9.1.2.2 Unit Prices:** By unit prices stated in this Agreement or subsequently agreed upon by the Contractor and the Owner;

**9.1.2.3 Costs:** By the Contractor's reimbursable costs as defined in Article 8 and the Contractor's Compensation defined by Article 7; or

**9.1.2.4 Other:** Any other method mutually agreed upon in writing by the Contractor and the Owner.

**9.1.3 Inequities:** If unit prices are stated in this Agreement or subsequently agreed upon in writing by the Contractor and the Owner, and if the quantities originally contemplated are so changed in a proposed Change Order or as a result of Change Order that application of the agreed unit price to the quantities of work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices and the GMP shall be equitably adjusted accordingly.

**9.1.4 Claims for Concealed or Unknown Conditions:** If conditions are encountered at the Project site which are (1) subsurface or otherwise concealed conditions that differ materially from those indicated by this Agreement, or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, then notice by the observing part shall be given to the other party promptly before the conditions are disturbed. Upon certification by the Architect that such conditions

exist, and if they cause an increase or a decrease in the Costs of the Project or the Schedule, the GMP and the Schedule shall be equitably adjusted by Change Order.

**9.1.5 Environmental:** The Contractor shall comply with all applicable environmental laws that apply to the Contractor's work. In the event the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or hazardous and toxic wastes which have not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner and Architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Contractor if in fact the material is asbestos, polychlorinated biphenyl (PCB) or hazardous and toxic wastes and have not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos, polychlorinated biphenyl (PCB) or hazardous and toxic wastes, or when it has been rendered harmless, by written agreement of the Owner and the Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 16. The Owner shall be responsible for all costs associated with remediation of the environmental conditions to the extent such conditions are not caused by the Contractor, or any Subcontractor or Material Supplier. Any changes to the GMP or the Schedule(s) resulting from such conditions shall be addressed pursuant to this Article 9.

**9.2 CLAIMS FOR ADDITIONAL COST OR TIME:** Notice of all claims for increases in the GMP shall be made, in writing, by the Contractor to the Owner within a reasonable time of the event giving rise to such claim. Such notice shall be provided by the Contractor to the Owner before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Claims for extensions of time to the Schedule arising from delay shall be made in writing within fifteen (15) days of the event giving rise to the delay. No claims for increases in the GMP or for extensions of time shall be valid unless made by the Contractor in accordance with this Paragraph. Any dispute between the Owner and the Contractor regarding the amount of the adjustment in the GMP or the Schedule(s) shall be determined pursuant to the provisions of Article 16. Any change in the GMP or the Schedule resulting from claims made pursuant to this Paragraph shall be authorized by Change Order.

**9.3 MINOR CHANGES IN THE PROJECT:** The Owner shall have authority to order minor Changes in the Work not involving an adjustment in the GMP or an extension of the Schedule and not inconsistent with the intent of the Final Drawings and Specifications. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor.

**9.4 EMERGENCIES:** In any emergency affecting the safety of persons or property, the Contractor or the Owner shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the GMP or extension to time claimed by the Contractor on account of emergency work shall be determined as provided in this Article 9.

## ARTICLE 10

### Discounts

**10.1 DISCOUNTS AND REBATES:** The Contractor shall take advantage of all trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, and shall credit the Owner for such items through offsets to the Actual Costs of the Project.

## ARTICLE 11

### Payments to the Contractor

#### **11.1 APPLICATION FOR PAYMENT DURING PRE-CONSTRUCTION PHASE:**

**11.1.1 Pre-Construction Phase:** The Owner shall make payments to the Contractor during the Pre-Construction Phase of the Project in the amount of Five Thousand and no/100 Dollars (\$5,000.00) per month, or prorata part thereof in the event of termination of this Agreement in accordance with Paragraph 2.1.5 or Paragraph 2.1.8 of this Agreement. For the purposes of this Paragraph, the "Pre-construction Phase of the Project" shall mean that phase of the Project that occurs before authorization to commence construction is issued by the Owner under Paragraphs 2.1.7 or 5.1 of this Agreement. The total sum paid by the Owner to the Contractor under this Paragraph shall be credited to the compensation owed by the Owner to the Contractor under Paragraph 7.1 of this Agreement.

#### **11.2 APPLICATIONS FOR PAYMENT AFTER COMMENCEMENT OF CONSTRUCTION:**

**11.2.1 Method; Retentions:** Upon delivery to the Owner of an Application for Payment in the form of Exhibit G submitted to the Owner by the Contractor and approved in writing by the Architect, together with a Certified Statement signed by the Contractor that the portion of the previous draw paid to the Contractor for work performed and materials supplied by subcontractors and material suppliers has been used to pay such subcontractors and material suppliers, less retentions, the Owner shall make payments of portions of the GMP directly to the Contractor for the period ending the thirtieth (30th) day of the month as follows: Not later than fifteen (15) days following receipt by the Owner of the Contractor's Application for Payment, ninety percent (90%) of the portion of the GMP properly allocable to labor, materials, equipment incorporated in the work and the Contractor's Compensation and ninety percent (90%) of the portion of the GMP properly allocable to materials and equipment suitably stored at the Project site or at some other location agreed upon in writing and identified for the Project, for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; provided, however, when the Project is one-half completed, then one-half of the retentions held to that time shall be released to the Contractor and during the final one-half of the construction of the Project the retention shall be reduced to five percent (5%) provided that the Contractor is performing in accordance with the project schedule and there is no specific cause or claim requiring a greater amount to be retained. If, at any time, the Owner determines that satisfactory progress is not being made, or that specific cause or

claim exists requiring a greater retention to be held, then the Owner may, at its option, reinstate the ten percent (10%) retention required under this Agreement to be held for all progress payments made under this Agreement subsequent to that determination.

**11.2.2 Payment on Substantial Completion:** No later than fifteen (15) days following Substantial Completion of the Project as determined pursuant to Paragraph 5.2 of this Agreement, the Owner shall pay to the Contractor a sum sufficient to increase the total payments to one-hundred percent (100%) of the total Costs of the Project plus the proportional share of the Contractor's Compensation, or the GMP, whichever is less, less one-hundred fifty percent (150%) of such amounts as the Architect shall determine for incomplete work and unsettled claims plus all uncanceled and discharged liens of record per paragraph 4.5. The Contractor shall complete all such work and settle all such claims and liens within thirty (30) days of Substantial Completion of the Project, provided, however, the Contractor shall have longer than thirty (30) days for those items that the Contractor demonstrates to the Owner require more than thirty (30) days to complete.

**11.3 FAILURE TO PAY:** If the Contractor is not in breach or default hereunder and the Owner fails to pay the Contractor at the time the payment of any amount becomes due, then the Contractor may, at any time thereafter, upon serving written notice that it will stop work within five (5) days after receipt of the notice by the Owner, and after such five (5) day period, stop the Project until payment of the amount owing has been received. Written notice shall be deemed to have been duly served made pursuant to the provisions of Paragraph 14.5.

**11.4 INTEREST:** Payments due and unpaid shall bear interest from the date payment is due at the rate of one percent (1%) per month.

**11.5 TITLE:** The Contractor warrants and guarantees that title to all work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, shall pass to the Owner upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances hereinafter referred to as Liens.

**11.6 SUBCONTRACTOR LIEN WAIVERS:** Final "Paid in Full" lien waivers shall be delivered to the Owner within fifteen (15) days of date the Contractor receives final payment from the Owner pursuant to Paragraph 11.9.1 of this Agreement, less deductions pursuant to Paragraph 11.9.2.

**11.7 ACCEPTANCE:** No Progress Payment nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Final Drawings and Specifications and all applicable building codes, laws, rules, and regulations.

**11.8 PARTIAL OCCUPANCY OR USE:** 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 any insurer as required in this Agreement 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 the Contractor have accepted, in writing, the responsibilities assigned to each of them for any security, maintenance, 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 under this Agreement. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Paragraph 11.2.2 of this Agreement. 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. Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied for a portion of the work to be used in order to determine and record the condition of the work. Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the work shall not constitute acceptance of the work not complying with the requirements of this Agreement.

## **11.9 FINAL PAYMENT:**

**11.9.1 Final Application:** When work has been completed on the Project, the Contractor shall submit to the Architect its final application for payment of those funds withheld by the Owner pursuant to Paragraph 11.2.2 of this Agreement. When this Agreement has been fully performed and all work has been completed, the Architect shall certify to the Owner the Contractor's final application for payment. Final payment shall be due to the Contractor fifteen (15) days after delivery to the Owner of both the final certification and a fully executed "Consent of Surety Company to Final Payment" (AIA Document G707) for each surety writing a performance and payment bond pursuant to Paragraph 15.10 of this Agreement. The Owner's signature on the Contractor's final Application for Payment shall constitute the Owner's acknowledgment that all conditions precedent to the Contractor's entitlement to the Contractor's final payment have been performed or have occurred.

**11.9.2 Minor Items:** If there should remain minor items to be completed, the Contractor and the Owner shall list such items and the Contractor shall deliver, in writing, his guarantee to complete said items within thirty (30) days thereafter, provided, however, the Contractor shall have longer than thirty (30) days for those items that the Contractor demonstrates to the Owner require more than thirty (30) days to complete. The Owner may retain a sum equal to 150% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items is likewise listed separately. Thereafter, the Owner shall pay to the Contractor, monthly, the amount retained for incomplete items as each of said items is completed. The owner may retain a sum equal to 150% the amounts of any Subcontractor uncanceled and discharged liens of record per Paragraph 4.4. If the Contractor does not complete items in accordance with this Paragraph, the Owner may, in its sole discretion, complete such items at the Contractor's expense.

**11.9.3 Time:** The Owner shall, within ten (10) days after receipt of the Contractor's final Application for Payment approved by the Architect, notify the Contractor of the Owner's approval and deductions, if any, pursuant to Paragraph 11.8.2. The Owner's signature on said Contractor's final Application for Payment shall constitute the Owner's acknowledgment that all conditions precedent to Contractor's entitlement to Contractor's final payment have been performed or have occurred.

**11.10 THE MAKING OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY THE OWNER EXCEPT THOSE ARISING FROM:**

**11.10.1 Claims:** Unsettled claims and liens.

**11.10.2 Workmanship:** Improper Workmanship or defective materials appearing within one year after Date of Substantial Completion of all phases of the Project except for such longer periods as provided by applicable law or set forth with respect to specific warranties contained in the Specifications.

**11.10.3 Failure:** Failure of the work to comply with the Final Drawings and Specifications.

**11.10.4 Guarantees:** Terms of any special guarantees required by the Final Drawings and Specifications.

**11.10.5 Acceptance:** The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and unsettled.

**ARTICLE 12**

**Insurance, Indemnity and Waiver of Subrogation**

**12.1 INDEMNITY:**

**12.1.1 Hold Harmless:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Architect, the Architect's consultants, and agents and employees of any of them from and against claims, damages, suits, losses and expenses, including but not limited to attorneys' fees, which are brought by any Subcontractor or material supplier and from any claims, damages, suits, losses and expenses, including but not limited to, attorneys' fees arising out of or resulting from performance of the work, provided that such claim, damage, loss, suit 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) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, a material supplier, 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 excluding the sole acts of negligence of the Owner, the Architect, the Architect's consultants, and agents and employees of any of them. 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 12.1.

**12.1.2 Other Contractors:** The Owner shall cause any other contractor who may have a contract with the Owner to perform work in the areas where work will be performed under this Agreement, to agree to indemnify the Owner, the Architect and the Contractor and hold them harmless from all claims for bodily injury and property damage (other than property insured under Paragraph 12.4) that may arise from that contractor's operations. Such

provisions shall be in a form satisfactory to the Contractor in the exercise of its reasonable judgment.

**12.1.3 Exemption:** The obligations of the Contractor under Paragraph 12.1 shall not extend to the liability of the Architect, Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval by the Architect of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## **12.2 CONTRACTOR'S LIABILITY INSURANCE:**

**12.2.1 Contractor's General Liability Insurance:** The Contractor shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Owner shall be added as additional insured on the Contractor's general liability insurance.

**12.2.1.1 Workmen's Compensation:** Claims under workers' compensation, disability benefit and other applicable employee benefit acts.

**12.2.1.2 Employer's Liability Law:** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees under any applicable employer's liability law.

**12.2.1.3 Bodily Injury; Death:** Claims for damages because of bodily injury, or death of any person other than his employees.

**12.2.1.4 Personal Injury Coverage:** Claims for damages insured by usual personal injury liability coverage which are sustained by any person other than employees.

**12.2.1.5 Destruction of Property:** Claims for damages, other than to the work itself including the existing building in which work is being performed, because of injury to or destruction of tangible property, including loss of use therefrom.

**12.2.1.6 Motor Vehicle:** Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

**12.2.2 Premises-Operations:** The Contractor's commercial general liability insurance shall include premises-operations (including explosion, collapse and underground coverage) elevators, per job aggregate limit, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

**12.2.3** The Contractor's commercial general and automobile liability insurance, as required

by Paragraphs 12.2.1 and 12.2.2, shall be written for not less than limits of liability as follows:

1. Commercial General Liability	
a. General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
2. Automobile Liability	
b. Combined Single Limit	\$1,000,000
3. Umbrella Liability	\$5,000,000

**12.2.4 Single Policy:** Commercial general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

**12.2.5 Cancellation:** The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Certificates of Insurance showing such coverages to be in force shall be filed with the Owner prior to commencement of the work.

**12.2.6 Good Standing:** The Contractor may select its insurance company, however, such insurance company shall be and remain authorized to do business in the State of Arizona by, and be licensed by and in good standing with, the Arizona Department of Insurance.

### **12.3 OWNER'S LIABILITY INSURANCE:**

**12.3.1** The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under this Agreement.

### **12.4 INSURANCE TO PROTECT PROJECT:**

**12.4.1 Property Insurance:** The Contractor shall present to the Owner a proposal whereby the Contractor would purchase and maintain property insurance in a form acceptable to the Owner upon the entire Project and any related buildings in which the Contractor performs work for the full cost of replacement as of the time of any loss. This insurance shall name as insured's the Owner, the Contractor, Subcontractors, material suppliers, and Subsubcontractors and shall insure against loss from the perils of fire, extended coverage, and shall include "All Risk" insurance for physical loss or damage including, without duplication of coverage, at least theft, vandalism, malicious mischief, transit, collapse, testing, and resulting damage from defective design, workmanship or material. If the Owner accepts the Contractor's proposal for such insurance, the Contractor shall purchase such insurance, and shall: (1) timely increase limits of coverage, if necessary, to reflect estimated replacement cost; (2) be responsible for any co-insurance penalties; and (3) not have any deductibles in an amount greater than \$2,000 per occurrence. If the Owner rejects the Contractor's proposal, then the Owner shall purchase insurance consistent with this Paragraph. Should the Owner choose to provide this insurance, the Contractor reserves the right to review the policy's terms, conditions,



definitions, and exclusions. The Contractor also reserves the right to purchase a difference in conditions coverage at the Owner's expense.

**12.4.2 Loss of Use:** The Owner shall purchase and maintain such insurance as will protect the Owner and the Contractor against loss of use of the Owner's property due to those perils insured pursuant to Subparagraph 12.4.1. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Owner and the Contractor, necessary labor expenses including overtime, loss of income by the Owner and other consequential exposures.

**12.4.3 Filing with Contractor:** The Owner shall file a copy of all policies required to be purchased and maintained by the Owner with the Contractor before an exposure to loss may occur. Copies of any subsequent endorsements will be furnished to the Contractor. The Owner will be given thirty (30) days notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

**12.4.4 Contractor's Insurer:** The Contractor may select its insurance company, however, such insurance company shall be and remain authorized to do business in the State of Arizona by, and be licensed by and in good standing with, the Arizona Department of Insurance.

## **12.5 PROPERTY INSURANCE LOSS ADJUSTMENTS:**

**12.5.1 Adjustment:** Any insured loss shall be adjusted with the Owner and the Contractor and made payable to the Owner and the Contractor as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

**12.5.2 Trust Account:** Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in absence of such agreement, in accordance with an arbitration award pursuant to Article 16. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted to arbitration pursuant to Article 16.

## **12.6 WAIVER OF SUBROGATION:**

**12.6.1 Waiver for Builder's Risk:** The Owner and the Contractor waive all rights against each other, the Architect, Subcontractors and Subsubcontractors for damages caused by perils covered by insurance provided under Paragraph 12.4, except such rights as they may have to the proceeds of such insurance held by the Owner and the Contractor as trustees. The Contractor shall require similar waivers from all Subcontractors and Subsubcontractors.

**12.6.2 Property Damage Waiver:** The Owner and the Contractor waive all rights against each other and the Architect, Subcontractor and Subsubcontractors for loss or damage to any equipment used in connection with the Project which loss is covered by any property insurance. The Contractor shall require similar waivers from all Subcontractors and Subsubcontractors.

**12.6.3 Adjacent Property; Consequential Damage:** The Owner waives subrogation against the Contractor, Architect, Subcontractors, and Subcontractors on all property and

consequential loss policies carried by the Owner on any existing properties in which work takes place as well as adjacent properties owned by or under the control of the Owner and under property and consequential loss policies purchased for the Project after its completion.

**12.6.4 Endorsement:** If the policies of insurance referred to in this Paragraph 12.6 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

**12.7 CANCELLATION:** If any policy or contract of insurance required of the Contractor by this Agreement is canceled, and the Contractor has not obtained a substitute policy or contract consistent with the provisions of this Agreement, then the Owner may obtain such insurance with such limits and deductions, inclusions and exclusions, as it shall deem proper in its sole discretion and shall charge to the Contractor the cost thereof.

## ARTICLE 13

### Termination of the Contract

#### 13.1 TERMINATION BY THE CONTRACTOR:

**13.1.1 Emergency Termination:** If the Project is stopped for a period of sixty (60) consecutive days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or the Owner, then the Contractor may, upon seven (7) days written notice to the Owner of intention to terminate, followed by a seven (7) day written notice to the Owner of termination, terminate this Agreement and recover from the Owner payment for all work executed, the Contractor's Compensation earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery and subcontract agreements.

**13.1.2 Default by Owner.** If the Contractor is not in breach or default hereunder and the Owner materially defaults in its obligations hereunder, and such default is not cured within ten (10) days following written notice from the Contractor to the Owner, then the Contractor may, upon giving seven (7) days written notice to the Owner, terminate this Agreement and the Contractor shall be entitled to the entire unpaid portion of the Contractor's Compensation and the amount of all unpaid costs of the project to the date of termination which are payable to the Contractor, but not to exceed the costs permitted by the GMP.

#### 13.2 TERMINATION BY THE OWNER:

**13.2.1 Financing Contingency.** The Contractor understands and acknowledges that at the time of execution of this Agreement, the Owner does not have sufficient financing to complete the Project. Nevertheless, the Owner has executed this Agreement to ensure that the Contractor is able to fully perform Pre-Construction services, which include, among other things, securing firm price and time commitments from the Contractor's subcontractors. Accordingly, the Contractor and Owner agree that this Agreement is contingent upon the Owner obtaining financing at terms satisfactory to the Owner on or before April 1, 1997, or upon a later date if mutually agreed in writing by the Owner and the

Contractor. If the Owner does not obtain financing at terms satisfactory to the Owner, the Owner may, at its sole discretion, terminate this Agreement. If the Owner terminates this Agreement because it did not obtain financing satisfactory to the Owner, the Contractor shall be compensated as provided in Paragraph 11.1.1 of this Agreement, and for the Contractor's costs of its personnel as provided in Paragraph 8.2.1 through 8.2.4 of this Agreement, and for any proven loss not to exceed Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) sustained by the Contractor upon any materials, equipment, tools, construction equipment, machinery, subcontractor agreements, to the extent such losses are directly caused by the Owner's termination of this Agreement under this paragraph.

**13.2.2 Default by Contractor.** If the Contractor is adjudged bankrupt, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make payment to Subcontractors for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in breach of a provision of this Agreement, then the Owner, may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, ten (10) days written notice to correct such condition, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment and the Contractor shall be liable to the Owner for any damages the Owner sustains to complete the Project in accordance with the Final Plans and Specifications including all general damages related thereto.

## ARTICLE 14

### **Assignments**

**14.1 SUCCESSORS AND ASSIGNS:** The Owner and the Contractor each binds itself and its permitted successors and assigns to the other party hereto and to the successors and assigns of such other party in respect to all covenants, agreements, and obligations contained in this Agreement. The Contractor shall not assign its rights or obligations hereunder without the written consent of the Owner.

**14.2 WRITTEN NOTICE:** Every provision for notice, demand or request required in this Agreement or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (or mailed, sent by commercial courier or by facsimile to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be sent certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below, or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day following posting as aforesaid or upon actual receipt, whichever is sooner. If commercially sent, the party giving such notice shall use a commercial courier service and shall be deemed to have been made on the day that the commercial courier delivers the notice or if faxed, the notice shall be deemed to have been given on the date that receipted

transmission of the facsimile message occurs. For the purposes herein, notices shall be sent to the Contractor and the Owner as follows:

CONTRACTOR: BFL CONSTRUCTION COMPANY, INC.  
140 South Euclid Avenue  
Tucson, Arizona 85719  
Fax No. (520) 882-7685

OWNER: WHITE MOUNTAIN APACHE TRIBE  
P.O. Box 700  
Whiteriver, Arizona 85941

*With copies of documents for the Owner sent to:*

Roger Leslie, General Manager

P.O. Box 3250

Pinetop, Arizona 85935

Facsimiles to the Owner shall be sent to: (520) 369-0382

**14.4 CLAIMS BY EITHER PARTY:** Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within 30 days time after the first observance of such injury or damage.

## ARTICLE 15

### **Miscellaneous Provisions**

**15.1 SIGNS:** The Contractor may display on the Project site advertising signs (as approved by the Owner, whose approval shall not be unreasonably withheld) or directional signs for material delivery which are in compliance with all local codes and zoning ordinances. Such signs shall be furnished, erected and, on completion of the Work, removed by the Contractor.

**15.2 LAYOUT:** The Contractor shall layout and establish all lines and levels required for the proper installation of its work. The Contractor shall compare existing conditions with working points and measurements at the Project site, and compare the Final Plans and Specifications to ascertain that they are in perfect agreement. Any difference shall be brought to the immediate attention of the Owner and the Architect.

**15.3 PUBLIC UTILITY SERVICES:** The Contractor shall ensure that all sewer lines, water lines, gas lines, electric conduit or other utility that may be encountered in the course of the work shall be protected, or run around so as not to break service.

**15.4 TIME IS OF THE ESSENCE:** Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

**15.5 WAIVER:** The waiver by either party of any breach of any of the terms and conditions

of this Agreement, including the "time is of the essence" provision, shall not constitute, infer or be deemed a waiver of any breach of any of the other terms and conditions or of any subsequent breach of the same term or condition.

**15.6 INDEPENDENT CONTRACTOR:** The Contractor specifically agrees and understands that it is and will remain during the performance of this Agreement, an independent contractor. Nothing contained herein shall create or infer the status of a partnership, joint venturer or employer/employee relationship between the Contractor and the Owner.

**15.7 COMPLIANCE:** The Contractor warrants that it does and shall continue to prohibit discrimination on the basis of race, color, religion, sex, or natural origin, and that it does comply and shall remain in compliance with any and all laws, regulations or orders applying hereto which prohibit discrimination on any unlawful basis whatsoever.

**15.8 DISCHARGE BOND:** In the event a mechanic's or materialman's lien is recorded against the Project or on the real property on which the Project is located, the Contractor shall, within twenty (20) days of notice thereof, cause the same to be discharged by the recordation of a bond in compliance with A.R.S. 33-1004.

**15.9 CONTRACT CONSTRUCTION:** The terms and provisions of this Agreement shall represent the results of negotiations between the Owner and the Contractor, each of which has been represented by counsel of its own choosing, and neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Owner and the Contractor hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement including, without limitation any rule of law to the effect that ambiguous or conflicting terms or provisions contained in the executed draft of this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft or any earlier draft of this Agreement.

**15.10 PERFORMANCE AND PAYMENT BOND:** The Contractor shall provide performance and payment bonds written by a surety company authorized to do business in the State of Arizona and who appears on the Treasury Department's most current list (Circular 570 as amended) and is qualified to write bonds for the amount set forth herein. Each bond shall be made in an amount equal to the total amount of the Project as security for the faithful and full performance of the Contractor's obligations under this Agreement and to assure the payment of all those performing labor or furnishing materials or performing subcontracts in connection therewith. The bonds must be made on the forms provided and must be accompanied by a power of attorney issued by the surety which verifies that the signature on the bonds are authorized to bind the surety.

## ARTICLE 16

### **Arbitration**

**16.1 METHOD:** All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association as

amended and in effect January 1, 1991, unless the parties mutually agree otherwise. Although said rules shall apply, arbitration shall not be conducted by or through the American Arbitration Association.

**16.2 NOTICE:** Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and, except for claims or disputes arising after Final Payment or termination of this Agreement, in no event shall it be made later than one-hundred eighty (180) days after such Final Payment or termination.

**16.3 PANEL:** In lieu of that procedure otherwise provided by said rules, all matters submitted to arbitration shall be decided by a panel of three (3) arbitrators each of whom shall have arbitration experience. In the Notice of Demand for Arbitration the party may appoint one (1) party-appointed arbitrator. The other party may, within ten (10) days of its receipt of the Notice of Demand for Arbitration, appoint a second party-appointed arbitrator. The two (2) party-appointed arbitrators shall, within twenty (20) days of their receipt of the Notice of Demand for Arbitration or such further time as may be agreed upon, appoint a third arbitrator. If the party-appointed arbitrators fail to appoint a third arbitrator, the third arbitrator shall be appointed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Arbitrators need not be approved or listed by the American Arbitration Association but shall agree to be bound by its rules.

**16.4 AWARD:** The award of the arbitrators shall be based on a decision agreed to by at least two (2) of the arbitrators. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable laws of the Court of the White Mountain Apache Tribe.

**16.5 NO STOPPAGE:** Unless otherwise agreed in writing, the Contractor shall carry on the work and maintain the Schedule during any arbitration proceedings and the Owner shall continue to make payments in accordance with this Agreement except for payments related to disputed items.

**16.6 GOVERNING LAW AND VENUE:** The validity and construction of this Agreement shall be governed by the contract laws of the state of Arizona with effect given to applicable Tribal and Federal laws, and subject to the exclusive jurisdiction of the courts of the White Mountain Apache Tribe. Hearings and other matters related to this Agreement shall occur in Whiteriver, Arizona. The execution and performance of this Agreement shall take place within the exterior boundaries of the Fort Apache Indian Reservation.

**16.7 ATTORNEYS FEES:** In addition to any other relief which the arbitrators may award, the prevailing party shall be entitled to an award for all expenses incurred including its share of arbitration filing fees, reasonable attorneys' fees and such other expenses as may be determined by the arbitrators to have been reasonably incurred in the presentation of its claim or defense.

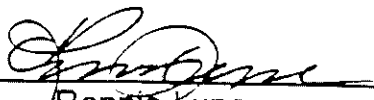
This Agreement entered into as of the day and year written above.

**OWNER:**

**CONTRACTOR:**

WHITE MOUNTAIN APACHE TRIBE

BFL CONSTRUCTION COMPANY, INC.  
AN ARIZONA CORPORATION

By   
\_\_\_\_\_  
Ronnie Lupe  
Chairman

By:   
\_\_\_\_\_  
Garry Brav  
President

# EXHIBIT A

## DESIGN DEVELOPMENT DRAWINGS PACKAGE

The following completed and approved construction Design Development Drawings Package by Stan Schuman, AIA consisting of Pages:

0.1	Site Plan	August 14, 1996
0.2	Grading Plan	August 19, 1996
1.0 - 1.3	Reference Floor Plan	November 1, 1996
1.4	Floor Plan	November 1, 1996
1.5	Room Finish Schedule	October 6, 1996
1.6 & 1.7	Dimension Floor Plan Convention Center	November 1, 1996
1.8 & 1.9	Dimension Floor Plan Bldg A / Lobby	November 1, 1996
1.10 & 1.11	Dimension Floor Plan Bldg B	November 1, 1996
1.12 & 1.13	Dimension Floor Plan Bldg C	November 1, 1996
1.14	Wall Partitions	November 1, 1996
1.15 - 1.18	Reflective Ceiling Plan	November 1, 1996
1.19	Sections Elevations	
1.20	Sections Elevations	September 26, 1996
1.21	Convention Center Sections	November 1, 1996
1.22 & 1.23	Convention Center Elevations	November 1, 1996
1.24	Sections	November 1, 1996
1.25 - 1.28	Interior Elevations	November 1, 1996
2.1	Entry Exhibit	November 1, 1996
3.00	General Structural Notes Interpretation of Drawings	November 1, 1996
3.01	Schedules	November 1, 1996
3.02	Typical Details	November 1, 1996
3.11	Foundation Plan Convention Center	September 19, 1996
3.12	Foundation Plan Bldg A	November 1, 1996
3.13	Foundation Plan Bldg B	November 1, 1996
3.14	Foundation Plan Bldg C	November 1, 1996
3.21	Foundation Details	November 1, 1996
6.11	Floor Framing Plan Convention Center	November 1, 1996
6.12	Floor Framing Plan Bldg A	November 1, 1996
6.13	Floor Framing Plan Bldg B	November 1, 1996
6.14	Floor Framing Plan Bldg C	November 1, 1996
6.21	Roof Framing Plan Convention Center	November 1, 1996
6.22	Roof Framing Plan Bldg A	November 1, 1996
6.23	Roof Framing Plan Bldg B	November 1, 1996



6.24	Roof Framing Plan Bldg C	November 1, 1996
6.51	Floor Framing Details	November 1, 1996
6.61	Roof Framing Details	November 1, 1996
7.1 & 7.2	Roof Plan	November 1, 1996
7.3	Roof Details	November 1, 1996
8.1	Door Schedule & Hardware	November 1, 1996
8.2 & 8.3	Window Elevations	November 1, 1996
11.1 - 11.5	Laundry Equipment	November 1, 1996
15.1	Specifications	November 1, 1996
15.2	Site Mechanical, Plumbing and Mechanical Plan	November 1, 1996
15.3	Mechanical Plan Bldg A - 1st Floor	November 1, 1996
15.4	Mechanical Plan Bldg A - 2nd Floor	November 1, 1996
15.5	Mechanical Plan Attic	November 1, 1996
15.6	Mechanical Plan Bldg B - 1st Floor	November 1, 1996
15.7	Mechanical Plan Bldg B - 2nd Floor	November 1, 1996
15.8	Mechanical Plan Attic	November 1, 1996
15.9	Mechanical Plan Bldg C - 1st Floor	November 1, 1996
15.10	Mechanical Plan Bldg C - 2nd Floor	November 1, 1996
15.11	Mechanical Plan Attic	November 1, 1996
15.12	Mechanical Plan Convention Center - 1st Floor	November 1, 1996
15.13	Mechanical Plan Convention Center - 2nd Floor	November 1, 1996
15.14	Mechanical Equipment Schedule Convention Center	November 1, 1996
15.15	Mechanical Riser Diagram	November 1, 1996
15.21	Plumbing Plan Bldg A - 1st Floor	November 1, 1996
15.22	Plumbing Plan Bldg A - 2nd Floor	November 1, 1996
15.23	Plumbing Plan Attic	November 1, 1996
15.24	Plumbing Plan Bldg B - 1st Floor	November 1, 1996
15.25	Plumbing Plan Bldg B - 2nd Floor	November 1, 1996
15.26	Plumbing Plan Attic	November 1, 1996
15.27	Plumbing Plan Bldg C - 1st Floor	November 1, 1996
15.28	Plumbing Plan Bldg C - 2nd Floor	November 1, 1996
15.29	Plumbing Plan Attic	November 1, 1996
15.30	Plumbing Plan Convention Center - 1st Floor	November 1, 1996
15.31	Plumbing Riser Diagrams	November 1, 1996
16.1	Electrical Symbols & Fixtures	November 1996
16.2	Electric Site Plan	November 1996
16.3	Lighting Plan Convention Center - 1st Floor	September 1996

16.4	Lighting Plan	November 1996
	Lobby & North Wing - 1st Floor	
16.5	Electrical Plan	November 1996
	Guest Room Wings - 1st Floor Corridor	
16.6	Lighting Plan	November 1996
	Convention Center - 2nd Floor	
16.7	Lighting Plan	November 1996
	Lobby & North Wing - 2nd Floor	
16.8	Electrical Plan	November 1996
	Guest Room Wings - 2nd Floor Corridor	
16.9	Power Plan	November 1996
	Convention Center - 1st Floor	
16.10	Power Plan	November 1996
	Lobby & North Wing - 1st Floor	
16.11	Power Plan	November 1996
	Guest Room Wings - 1st Floor	
16.12	Power Plan	November 1996
	Convention Center - 2nd Floor	
16.13	Power Plan	November 1996
	Lobby & North Wing - 2nd Floor	
16.14	Power Plan	November 1996
	Guest Room Wings - 2nd Floor	
16.15	Electrical Plans	November 1996
	Partial & Enlarged	
16.16 - 16.18	Electrical Panel Schedules	November 1996
16.19	Electrical One-Line Diagram	November 1996

are hereby incorporated by this addendum.

This Addendum accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

WHITE MOUNTAIN APACHE TRIBE

BFL CONSTRUCTION COMPANY, INC.  
AN ARIZONA CORPORATION

By: \_\_\_\_\_  
Roger Leslie  
General Manager

By: \_\_\_\_\_  
Garry Brav  
President

EXHIBIT B

GUARANTEED MAXIMUM PRICE

Per our Agreement dated March \_\_\_\_, 1997, the following Guaranteed Maximum Price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) is hereby incorporated by this addendum.

This Addendum accepted on this \_\_\_\_ day of \_\_\_\_\_, 1997.

WHITE MOUNTAIN APACHE TRIBE

BFL CONSTRUCTION COMPANY, INC.  
AN ARIZONA CORPORATION

By: \_\_\_\_\_  
Roger Leslie  
General Manager

By: \_\_\_\_\_  
Garry Brav  
President

EXHIBIT C

FINAL DRAWINGS & SPECIFICATIONS

Per our Agreement dated March \_\_\_\_, 1997, the following completed and approved construction documents by \_\_\_\_\_ dated \_\_\_\_\_, 199\_\_ and consisting of Pages \_\_\_\_\_ are hereby incorporated by this addendum.

This Addendum accepted on this \_\_\_\_ day of \_\_\_\_\_, 1997.

WHITE MOUNTAIN APACHE TRIBE

BFL CONSTRUCTION COMPANY, INC.  
AN ARIZONA CORPORATION

By: \_\_\_\_\_  
Roger Leslie  
General Manager

By: \_\_\_\_\_  
Garry Brav  
President

# OWNER'S NOTICE TO PROCEED

Per our Agreement dated March \_\_\_\_, 1997, BFL Construction Company, Inc. requests the Owners Notice to Proceed authorization, as acknowledged below, for authority to proceed with construction on the project:

## 5.1 Contract Time Schedule

Approval of Final Plans	_____
Building Permits Issued	_____
Notice to Proceed	_____

**Based upon the above dates, this project shall be substantially complete on \_\_\_\_\_.**

WHITE MOUNTAIN APACHE TRIBE

BFL CONSTRUCTION COMPANY, INC.  
AN ARIZONA CORPORATION

By: \_\_\_\_\_  
Roger Leslie  
General Manager

By: \_\_\_\_\_  
Garry Brav  
President

# PROPERTY INFORMATION SHEET

SURETY COMPANY:

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BONDING AGENT:

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BOND NUMBER:

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Per Arizona Revised Statutes 33-992.01., Sections I and J, we are requesting the following information for the above referenced job.

OWNER OF BUILDING/PROPERTY  
AS PER TITLE \_\_\_\_\_

ADDRESS OF OWNER \_\_\_\_\_

NAME OF CONSTRUCTION LENDER \_\_\_\_\_

ADDRESS OF CONSTRUCTION LENDER \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_

LEGAL DESCRIPTION OF PROPERTY \_\_\_\_\_

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# APPLICATION AND CERTIFICATE FOR PAYMENT

To (OWNER)

Project

From (Contractor) BFL CONST CO INC  
140 SOUTH EUCLID AVE  
TUCSON ARIZONA 85719

VIA (Architect)

Application # 1

Period To: JAN 1 1994

Architect's  
Project No

## CONTRACTOR'S APPLICATION FOR PAYMENT

Contract Date: NOV 24 1993  
Application is made for payment, as shown below, in connection with the contract Continuation sheet, AIA Document G703, is attached

Change order summary

Change orders approved in previous months by owner	Additions	Deductions
Total		

Approved this Month

Number Date Approved

CO1A  
CO1B

Total

Net Change by Change Orders

The undersigned contractor certifies that to the best of the contractor's knowledge, information and belief the work covered by this application for payment has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for the work for which previous certificates for payment were issued and payment received from the owner, and that current payment shown herein is now due

Contractor

By

Date:

07/26/95

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

My Commission expires

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for.)  
ARCHITECT

By

Date

This Certificate is not negotiable the AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

State of Arizona  
Subscribed and sworn to before me this 28th day of July 95  
Notary Public

- 1 ORIGINAL CONTRACT SUM
- 2 Net change by Change Order
- 3 Contract sum to Date (Line 1+2)
- 4 Total Completed & Stored To Date (column G on G703)
- 5 Retainage.
  - a % of completed work (Column D+E on G703) 10 00%
  - b % of stored Materials (Column F on G703) 10 00%
- Total retainage (Line 5a+5b or Total in column I of G703)
- 6 TOTAL EARNED LESS RETAINAGE (Line 4 less line 5 total)
- 7 Less previous certificates for Payment (line 6 from prior certificate)
- 8 CURRENT PAYMENT DUE
- 9 BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less line 6)