

CONSTRUCTION CONTRACT BETWEEN WALMART AND CONTRACTOR

This Construction Contract Between Walmart and Contractor (this “Contract”) is made and entered into by and between the entities identified below as Walmart and Contractor, as of the Effective Date identified below.

**ARTICLE 1
GENERAL PROVISIONS**

1.1 PROJECT SPECIFIC TERMS

1.1.1 EFFECTIVE DATE: Click here to enter text.

1.1.2 PROJECT: Click here to enter text.
Store # Click here to enter text.
Sequence # Click here to enter text.
Site/Address # Click here to enter text.
Purchase Order # Click here to enter text.
Permit Purchase Order # Click here to enter text.
General Reimb. Purchase Order # Click here to enter text.
Audit Purchase Order # Click here to enter text.
SAP Project Definition # Click here to enter text.

enter text.

1.1.3 WALMART: Wal-Mart Stores, Inc.

1.1.4 WALMART’S CONTRACT ADMINISTRATOR: Click here to enter text.

Physical Address: Realty Contracts Administration
Attention: Contracts Admin
Department: 8974
2001 SE 10th Street
Bentonville, AR 72716-5570

1.1.5 CONTRACTOR: Click here to enter text.
Vendor # Click here to enter text.

Contractor represents that it is a Click here to enter text. duly organized, validly existing and in good standing, under the laws of the State of Click here to enter text. and that, to the extent required by applicable law, Contractor has qualified as a foreign business eligible to conduct business in the State where the Project is located and under the laws of all other jurisdictions where the nature of its business or the nature or location of its assets requires such qualification.

1.1.6 CONTRACTOR’S SUPERINTENDENT(S): Click here to enter text.

1.1.7 ARCHITECT: Click here to enter text.

1.1.8 **CONTRACT DOCUMENTS:** The Contract Documents consist of: (1) this Contract (including all Exhibits hereto); (2) the “**Addenda**” listed in Exhibit 1.1.8 hereto; (3) the “**Specifications**” listed in Exhibit 1.1.8 hereto; (4) the “**Drawings**” listed in Exhibit 1.1.8 hereto; (5) any other documents listed in Exhibit 1.1.8 hereto; and (6) all Modifications issued after execution of this Contract. A “**Modification**” is: (a) a written amendment to this Contract signed by both parties; (b) a Change Order; or (c) a minor change in the Work required by Walmart pursuant to paragraph 4.2.5 below.

1.1.9 **SPECIAL CONDITIONS:** Contractor shall comply with Exhibit 1.1.9 hereto, entitled Special Conditions.

1.1.10 **WORK:** Contractor shall provide, and as used in the Contract Documents the term “**Work**” shall include, all labor, supervision, materials, fixtures, special facilities, water, heat, utilities (whether temporary or permanent), transportation, built-ins, equipment, tools, supplies, taxes, occupancy permits and related inspections, and other property and services necessary and/or appropriate to timely and properly produce all work required by, or reasonably inferable from, the Contract Documents, including all property and services necessary to produce completed construction that is fully connected, operable and ready for its intended use.

1.1.11 **CONTRACT SUM:** Walmart shall pay Contractor for the complete and proper performance of Contractor’s obligations under this Contract, including completion of all Work required hereby, the amount of \$[Click here to enter text](#). (the “**Contract Sum**”).

1.1.12 **PROGRESS PAYMENTS:** The period covered by each Application for Payment shall be one calendar month beginning on the first day, and ending on the last day, of each calendar month or such shorter time as may be required by applicable law (each a “**Payment Period**”). Contractor shall submit an Application for Payment within 10 days after the end of each Payment Period during which Work is performed unless applicable law requires Walmart to provide Contractor with a longer period of time following each Payment Period to submit an Application for Payment, in which case such longer period of time shall apply. Except as otherwise provided herein, Walmart shall make progress payments to Contractor within 21 days after receipt of each timely and proper Application for Payment or such shorter time as may be required by applicable law.

1.1.13 **RETAINAGE:** Retainage equal to [Click here to enter text](#). percent (%) of all amounts requested for payment by Contractor may be held by Walmart until all Work on the Project is Finally Complete, except to the extent the foregoing conflicts with any limitations or requirements imposed by applicable law, in which case the applicable retainage amounts shall be deemed to be the maximum amounts otherwise allowable or required under applicable law, and such amounts shall be returned as and when otherwise required by such laws.

1.1.14 **ALTERNATES AND UNIT PRICES:** The Work to be performed by Contractor includes, and the Contract Sum includes complete compensation for, the alternates identified on Exhibit 1.1.14 hereto, as such alternates are described elsewhere in the Contract Documents. Also identified on Exhibit 1.1.14 are Unit Prices that apply to changes in the Work if specifically so directed in a written Change Order signed by Walmart.

1.1.15 **COMMENCEMENT OF WORK AND RELATED DELIVERABLES:** On or before [Click here to enter text](#)., (the “**Date of Commencement**”), Contractor shall cause all insurance required by Article 7 to be effective and shall commence performance of the Work. Notwithstanding any contrary provision, as a condition precedent to Walmart’s obligation to make any payment to Contractor under this Contract, Contractor shall deliver to Walmart each of the following items on or before the dates specified below:

Remit by email, scan and send, to the Contract Administrator within 48 hours of award of Contract:

- Certificate(s) of insurance, including general liabilities, automobile liabilities, workers’ compensation and builders risk, in accordance with the Contract Documents, naming Walmart as additional insured with the store number and location mentioned
- Performance and Payment Bonds (Bonds must be on Walmart form)

Remit by email to the Contract Administrator within two (2) business days of receipt of Contract:

- Electronic Contract Acceptance

Remit by electronic form designated by Walmart to the Contract Administrator within ten (10) business days of award of Contract:

- Subcontractor Listing

Remit by email to the Contract Administrator within ten (10) days of award of the Contract or one (1) week after the Pre-Construction Meeting, whichever occurs first:

- Performance and Payment Bonds (with county recordation stamp visible).

1.1.16 **CONTRACT TIME:** Subject only to extensions for Excused Delays, Contractor shall perform the Work within the time limits set forth on Exhibit 1.1.16, and shall achieve Substantial Completion of all Work on or before [Click here to enter text.](#) (collectively, the “**Contract Time**”).

1.1.20 **INSURANCE:** The coverage and liability limits of insurance policies required of Contractor under Article 7 of this Contract shall be not less than those specified on Exhibit 1.1.20.

1.2 BASIC DEFINITIONS, CONTRACT DOCUMENTS AND WORK

1.2.1 All terms and phrases defined herein or elsewhere in the Contract Documents shall have the meanings and definitions set forth herein or therein. Terms which have well known technical or construction industry meanings are used in accordance with such recognized meanings, unless otherwise defined herein or elsewhere in the Contract Documents or unless the context clearly indicates a different meaning.

1.2.2 The Project is the total construction, of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by Walmart or by Separate Contractors.

1.2.3 The terms of all Contract Documents are fully incorporated herein by reference and are as fully a part of this Contract as if attached hereto or repeated herein. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede Contractor’s bid and/or proposal and all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification.

1.2.4 Contractor shall comply with the terms and conditions of this Contract (including all Exhibits hereto), the Addenda, the Specifications, the Drawings and any Modifications. In the event of any conflict or inconsistency among the terms of any of the Contract Documents, the terms of the first-referenced Contract Document shall prevail to the extent of the inconsistency, in the same order as listed in paragraph 1.1.8 above (for example, in the event of conflicting provisions, the terms of this Contract shall govern over the Addenda, Specifications and Drawings. Notwithstanding the foregoing: (1) a Modification shall take precedence over that portion of any other Contract Document which it modifies; and (2) with respect to conflicts or inconsistencies between the Specifications and Drawings relating to the extent of the Work to be performed, all work necessary for the execution of the Work (whether shown on the Drawings and not described in the Specifications, or described in the Specifications and not shown on the Drawings) and any work which is reasonably inferable as necessary to complete the Work within the limits established by the Contract Documents shall be considered as part of the Contract, and shall be executed by Contractor in the same manner and with the same character and quality of material as other portions of the Work, without any increase in Contract Sum or extension of the Contract Time. In the event of duplication or conflict among the Contract Documents, Contractor shall notify Walmart of the duplication or conflict, will obtain Walmart’s direction as to its resolution before proceeding with any affected Work and, unless otherwise directed in writing by Walmart, shall comply with the most stringent of the duplicative and/or conflicting requirements without increase in the Contract Sum or extension of the Contract Time.

1.2.5 Contractor is independently responsible for obtaining, reviewing and coordinating the provisions of all Contract Documents, whether or not such documents have been delivered to Contractor, have been individually signed by Contractor and Walmart or have been physically attached to this Contract. The failure to review or obtain any such document shall not relieve or excuse Contractor from compliance with its terms or the terms of any other Contract Document.

1.2.6 Contractor covenants to cooperate with Walmart and Walmart’s Consultants including, without limitation, Architect, in connection with the Project and to exercise skill and judgment in furthering the interests of Walmart, to furnish

efficient business administration and supervision, to furnish at all times an adequate supply of workers and materials, and to perform the Work in an expeditious and economical manner consistent with Walmart's interests.

1.2.7 Contractor shall cause all Work to be performed in strict accordance with the Contract Documents including, without limitation, those portions of the Specifications and Drawings concerning compliance with Title III of the Americans with Disabilities Act, 42 U.S.C. 12182 *et seq.*, the 2010 ADA Standards for Accessible Design, and the other Compliance Requirements. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together, and shall not be read by separate trade areas or design divisions, and shall be read to require Contractor to provide fully connected, complete, operational and functional systems and finishes.

1.2.8 Contractor agrees that the later refinement or description of any work set forth in or reasonably inferable from the Contract Documents identified in Exhibit 1.1.8, whether by oral instruction or the issuance of Addenda, written specifications, directions or clarifications, shall not entitle Contractor to compensation in addition to the Contract Sum and/or an extension of the Contract Time unless such later refinement or description constitutes a Material Change. A "**Material Change**" is defined as a change to the Project that is initiated by Walmart, or additional work required because of a condition entitling Contractor to additional compensation pursuant to paragraph 1.3.4 herein, that, in either case, involves work of a materially different nature, character, scope or cost (other than refinement) than that set forth in or reasonably inferable from the Contract Documents identified in Exhibit 1.1.8. No change shall constitute a Material Change unless Walmart authorizes Contractor to proceed with the changed work before the commencement thereof in a written Change Order signed by Walmart.

1.3 EXECUTION, CORRELATION AND INTENT

1.3.1 Contractor represents that it has carefully studied and compared the Contract Documents with each other and with the other information furnished by Walmart, and has clarified and resolved all questions, uncertainties, ambiguities and inconsistencies relating to the Contract Documents, Contractor's bid, and the Work required of Contractor pursuant to this Contract. Accordingly, Contractor represents and warrants that: (1) the Contract Sum established in paragraph 1.1.11 above is adequate to compensate Contractor for all Work required by or reasonably inferable from the Contract Documents identified in Exhibit 1.1.8 hereto and is sufficient to finance the costs of all labor, work, services, material and equipment needed to fully, timely and properly perform such Work; (2) the Contract Time established by this Contract is adequate to allow Contractor to complete its Work fully and properly within the time established, and Contractor has available and will supply sufficient manpower (including necessary supervision and support services) to complete its Work, fully and properly, within the Contract Time; and (3) Contractor otherwise has and will supply sufficient personnel and resources to perform its Work in a full, timely and proper manner and to comply with all of the terms and conditions set forth in the Contract Documents. Contractor expressly acknowledges and agrees, based on the foregoing, that it will not be entitled to any increase in the Contract Sum and/or any extension in the Contract Time and will not be entitled to any increased compensation or other damages of any kind or nature, based on any claim that Contractor's bid was based on a mistake or misunderstanding as to the requirements of the Contract Documents, or based on any other claim that Contractor misconstrued, misinterpreted, misread, mistook or otherwise failed to understand all of the terms and conditions of the Contract Documents and/or Contractor's Work on the Project as set forth therein.

1.3.2 The Contract Documents, Drawings, Specifications and other documents are to be considered as cooperative and complementary, and what is required by one shall be as binding as if required by all.

1.3.3 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor shall be responsible for assigning or dividing the Work among Subcontractors as necessary for the full and timely completion of all construction required by any of the Contract Documents, whether or not the Contract Documents specifically identify the trade or type of Subcontractor responsible for each element of the Work, or assign or divide each element of the Work to or among different Subcontractors. The failure of the Contract Documents to identify the trade or type of Subcontractor responsible for each element of the Work or to assign or divide the Work to or among different Subcontractors shall not entitle Contractor to any additional or extra compensation from Walmart. If an element of the Work is included in the Contract Documents but is not specifically identified to a section of the Specifications, Contractor nonetheless shall be responsible for doing the Work and shall not be entitled to any increase in the Contract Sum on account of said Work or as a result of the failure to identify such Work to a particular section of the Specifications.

1.3.4 By executing this Contract, Contractor represents that, consistent with highest standards of skill, care and diligence applicable to construction contractors performing construction services on projects similar to the Project in the same geographic location as the Project, Contractor has thoroughly inspected and familiarized itself with the Project site, all reports, studies and materials provided by Walmart, local information, seasonal weather conditions and any other reasonably available

documents and information concerning conditions under which the Work will be performed. Based on such inspection and familiarization, Contractor agrees that it shall not be entitled to additional compensation or time as a result of any condition that could have been reasonably foreseen prior to the execution of this Contract. Further, Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time as a result of any obstruction, difficulty or condition, to the extent that such obstruction, difficulty or condition could be avoided or mitigated by Contractor's use of any reasonable construction means, methods, techniques, sequences, procedures and/or coordination of the Work. If Contractor encounters concealed physical conditions that could not have been reasonably foreseen before execution of this Contract, avoided or mitigated despite the exercise of due diligence as set forth above ("**Reasonably Unforeseen Conditions**"), then Contractor shall promptly deliver to Walmart in writing a Preliminary Change Request as set forth in paragraph 4.2.1, and the parties agree that the terms of paragraph 4.2 shall govern the rights and obligations of the parties with respect to such matters. The term "Reasonably Unforeseen Conditions" shall not include conditions previously identified in the Contract Documents, a Phase 1 or Phase 2 environmental study, a remedial action plan, a soil management plan, or another report, study or document provided or reasonably available to Contractor. The failure of Contractor to deliver to Walmart a Preliminary Change Request as set forth in paragraph 4.2.1 following Contractor's discovery of what it believes to be a Reasonably Unforeseen Condition within the applicable time frame established by paragraph 4.2.1 shall mean that Contractor has irrevocably waived the right to claim any increase or adjustment in the Contract Sum or Contract Time on account of such condition, and Contractor shall perform all work required by or in connection with any occurrence or condition giving rise to the claim without increase in the Contract Sum, an extension of the Contract Time or other compensation or remedy of any kind. Provided Contractor has complied with the procedures set forth in paragraph 4.2, if the parties cannot agree about whether or to what extent Contractor has encountered Reasonably Unforeseen Conditions, Contractor may proceed with a claim as provided in paragraph 8.3.

1.3.5 Without limiting the generality of the foregoing, the parties expressly acknowledge and agree that the following terms shall apply with respect to Rock Excavation.

- (1) As used herein, "**Rock Excavation**" shall mean the excavation and disposal of igneous, metamorphic or sedimentary rock that cannot be removed by rippers or other mechanical methods and, therefore, requires drilling and blasting. Excavation of rock or other materials that can be removed by rippers or other mechanical methods shall not constitute "Rock Excavation" or a "Reasonably Unforeseen Condition," even if such rock or other materials are not shown on any soils report or other information available to Contractor.
- (2) All Rock Excavation that is indicated by any available soils report shall be considered unclassified excavation, shall be included with site work grading as part of the applicable line item on the Schedule of Values, and Contractor shall be obligated to perform all such Rock Excavation as part of its Work, and Contractor shall not be entitled to any increase in the Contract Sum or extension in the Contract Time on account of such Rock Excavation.
- (3) If Contractor believes that Rock Excavation not indicated by any available soils report or other information is required, Contractor may, subject to the terms of paragraphs 1.3.4 and 4.2 generally, submit a Preliminary Change Request to Walmart in accordance with the procedure set forth in paragraph 4.2.1 with respect to such condition.

1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.4.1 The Drawings, Specifications, Addenda and other documents prepared by Architect, Walmart or Walmart's Consultants through which the Work to be executed by Contractor is described shall not be used by Contractor, its Subcontractors or any person other than Walmart on projects other than the Project unless expressly authorized in writing by Walmart. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, Addenda and other documents prepared by Architect or Walmart's Consultants appropriate to, and for use in the execution of, their work under the Contract Documents. Neither Contractor nor any Subcontractor or material, or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Architect, Walmart or Walmart's Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project shall not be construed to be a publication or derogation of Walmart's rights with respect to such Drawings, Specifications, Addenda and other documents.

1.4.2 Contractor also represents and warrants that all of its Work shall be considered a work made for hire and that Walmart shall be the sole and exclusive owner of any and all right, title, and interest in, to, and under intellectual property (including, without limitation, all inventions, patents, works of authorship, copyrights, trademarks, trade names, trade dress, and trade secrets) that is (1) created by, for, or on behalf of Contractor, any Subcontractor or any of their respective affiliates, officers, employees, partners, members, managers, agents and representatives; and (2) related to the Work and/or any materials

used to complete the Work, or otherwise related to this Contract (the “**Intellectual Property**”), and Contractor hereby irrevocably assigns, transfers, sets over, conveys, and delivers its entire right, title, and interest in and to the Intellectual Property to Walmart, and its successors and assigns.

ARTICLE 2 **WALMART**

2.1 INFORMATION AND SERVICES REQUIRED OF WALMART

2.1.1 Walmart shall secure and pay for necessary governmental approvals required for construction of the Work which are not the responsibility of Contractor under the Contract Documents.

2.1.2 Walmart shall furnish a survey or surveys describing certain physical characteristics and approximate utility locations at the Project site, and containing a legal description of the Project site.

2.1.3 Information or services under Walmart’s reasonable control shall be furnished by Walmart with reasonable promptness following Contractor’s written request therefor.

2.1.4 Contractor will be furnished free of charge one (1) electronic copy of the Drawings, Specifications and Addenda, for execution of the Work on the Project. All other copies of the Drawings, Specifications and Addenda or other Contract Documents shall be at Contractor’s sole cost and expense.

2.2 WALMART’S CONSTRUCTION MANAGER

2.2.1 Walmart will notify Contractor of the Walmart construction manager authorized to act on Walmart’s behalf with respect to the Project. Walmart may also notify Contractor of a separate mechanical construction manager authorized to act on behalf of Walmart with respect to the mechanical aspects of the Project. As used herein, the term “**Walmart’s Construction Manager**” shall refer to the construction manager and/or to any separate mechanical construction manager identified by Walmart to Contractor, as appropriate. In the event Contractor receives any instructions or approvals, either in writing or orally, by persons other than Walmart’s Construction Manager, Contractor shall provide written notice to Walmart’s Construction Manager and Walmart’s Contract Administrator of such instructions or approvals and shall not act upon such instructions or approvals until provided with directions from Walmart’s Construction Manager. Unless otherwise agreed in writing between the parties or otherwise provided in this Contract, Contractor shall not accept requests for work or services or other directions, in connection with the performance of the Work pursuant to this Contract unless such request or direction is issued by Walmart’s Construction Manager. A new Construction Manager may be designated by Walmart at any time and from time to time by providing notice to Contractor.

2.2.2 Contractor hereby acknowledges that Walmart’s Construction Manager (either directly or through specific authority given in writing by Walmart’s Construction Manager to another person) shall, without limitation, have authority and the right to: (1) reject Work which does not conform to the Contract Documents; (2) stop the Work in order to require its proper execution or order the correction of Work which Walmart’s Construction Manager determines is defective, substandard or not in conformance with the applicable Contract Documents; and (3) require special inspection or testing of the Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or complete. The foregoing rights of Walmart’s Construction Manager shall not give rise to a duty on the part of Walmart to exercise such rights for the benefit of Contractor or any other person or entity.

2.3 WALMART’S CONSULTANTS

2.3.1 Contractor acknowledges and accepts that, in addition to Architect, Walmart may retain other persons or entities to assist Walmart in connection with the design and construction of the Project, which entities are collectively referred to herein as “**Walmart’s Consultants**.” Contractor further acknowledges and accepts that Walmart’s Consultants may assist Walmart in reviewing and evaluating Contractor’s Work pursuant to this Contract, in meetings and discussions with Contractor regarding the design and construction on the Project, and in administering construction of the Project.

2.3.2 Contractor agrees to cooperate fully with Walmart’s Consultants with respect to all activities or services requested or required by Walmart to be performed by Walmart’s Consultants in connection with the Project. Specifically, Contractor agrees that it shall maintain communication and shall coordinate Contractor’s Work with Walmart’s Consultants, as necessary to facilitate the full, timely and proper performance of all construction work on the Project.

2.3.3 Contractor acknowledges and agrees that Architect and Walmart's Consultants are solely advisors and assistants to Walmart and that they shall not have authority to act as Walmart's agents or otherwise to act on behalf of Walmart in connection with the Project or this Contract unless, and to the extent, expressly so provided herein or so indicated to Contractor in writing by Walmart. Specifically, Contractor acknowledges and agrees that neither Architect nor Walmart's Consultants may order, authorize or approve any change in the Work, Contract Sum or Contract Time, and that all such changes may be authorized only by Walmart through the execution of a written Change Order.

2.3.4 Contractor acknowledges and agrees that the performance of work hereunder together with or under the observation of Architect and/or Walmart's Consultants shall not relieve, reduce or diminish Contractor's liability to Walmart for errors, omissions, deficiencies, breaches of contract or breaches of warranty in connection with the performance of Work on the Project by Contractor or its Subcontractors. Specifically, Contractor understands and agrees that Walmart, Architect and Walmart's Consultants are under no obligation to Contractor to inspect the Work or discover defects or deficiencies in the Work, and that the failure of Walmart, Architect or Walmart's Consultants to discover and/or notify Contractor of defects, deficiencies or other problems in the Work shall not in any way constitute a waiver or acceptance of any such defect, deficiency or other problem or in any way affect or reduce Contractor's responsibilities or obligations pursuant to the Contract Documents.

2.4 WALMART'S RIGHT TO CARRY OUT THE WORK

2.4.1 If (1) Contractor fails to carry out the Work and perform its obligations in accordance with the Contract Documents, (2) Contractor fails to continuously and diligently perform, forward and prosecute the Work so that it is in accordance with the time period set forth in the Contract Documents (including, without limitation, the then current Project Schedule), or (3) Walmart reasonably determines that Contractor is behind schedule to such an extent that it is unlikely that Contractor will complete the Work on time, then Walmart will have the right, to the maximum extent permitted by applicable law, and without prejudice to any other remedy Walmart may have, to exercise any of the following remedies, provided Walmart has delivered written notice to Contractor of its intention to do so and Contractor has failed to remedy the condition within seven (7) days after receiving such notice: (a) perform any of the Work or contract with a third party to perform any of the Work, or a combination of both, which Walmart determines Contractor is failing to prosecute in accordance with the Contract Documents following delivery of written notice to Contractor of such decision, in which case Walmart shall have the right to deduct from payments then or thereafter due Contractor the cost of performing such Work, and/or (b) terminate this Contract immediately upon notice to Contractor, in which case Walmart shall, in addition to any other rights or remedies available to Walmart, have the right to complete the Work or to contract with a third party to complete the Work, or a combination of both, and Contractor shall promptly reimburse Walmart for all fees, costs and expenses incurred by Walmart as a result thereof.

2.4.2 Notwithstanding the foregoing, Walmart may exercise the rights set forth in subparagraphs (a) or (b) of the immediately preceding paragraph (and without being obligated to provide Contractor with written notice and an opportunity to cure) if the basis for the exercise by Walmart of such right is that Contractor has failed to strictly comply with any of the Compliance Requirements or has otherwise violated any applicable federal, state or local laws, rules, regulations, statutes, codes, orders or ordinances. The foregoing rights of Walmart are in addition to any other rights or remedies that Walmart may have at law or in equity by reason of any failure by Contractor to perform according to the terms of the Contract Documents.

2.5 WALMART'S ADMINISTRATION

2.5.1 Contractor agrees that Walmart, either directly (*i.e.*, through Walmart's Construction Manager) and/or through any third party designated in writing by Walmart, shall have access to the Work in progress and may observe and inspect the Work, and shall have authority to stop the Work if necessary for its proper execution or to order the repair or replacement of Work that Walmart determines is defective or not in conformance with the Contract Documents.

2.5.2 Walmart will have authority to reject Work which does not conform to the Contract Documents. Whenever, in the reasonable opinion of Walmart, it is considered necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, Walmart will have authority to require special inspection or testing of the Work in accordance with the terms of the Contract Documents, whether or not such Work be then fabricated, installed or completed. However, neither Walmart's authority to act under this paragraph, nor any decision made by Walmart in good faith, either to exercise or not to exercise such authority, shall create any duty or responsibility on the part of Walmart to Contractor, to any Subcontractor, to any of their agents or employees, or to any other person performing any of the Work, nor shall it affect or reduce Contractor's responsibilities pursuant to this Contract to perform the Work in conformance with the requirements of the Contract Documents and free from defects or deficiencies in materials or workmanship.

2.6 THIRD-PARTY ADMINISTRATION

2.6.1 Walmart reserves the right to delegate, in whole or in part, any rights and responsibilities regarding administration of this Contract to Architect and/or Walmart's Consultants. Architect and Walmart's Consultants may advise and consult with Walmart, and as advisors to Walmart, not Walmart's general agents. Architect and Walmart's Consultants will have authority to act on behalf of Walmart only to the extent provided in the Contract Documents or subsequent written instructions from Walmart.

2.6.2 Walmart, Architect and Walmart's Consultants will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility. The failure of Walmart, Architect and/or Walmart's Consultants to discover and/or notify Contractor of any defects, deficiencies or other problems in the Work shall not in any way constitute a waiver or acceptance of such defects, deficiencies or problems and shall not in any way affect or reduce Contractor's responsibilities pursuant to this Contract to perform the Work in conformance with the requirements of the Contract Documents and free from defects or deficiencies in materials or workmanship.

2.6.3 Walmart, Architect and/or Walmart's Consultant(s), as appropriate, will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the information and design concepts expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness or other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which are the responsibility of Contractor. Review and approval of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents. Review of submittals shall not constitute approval of safety precautions or, unless otherwise specifically stated, of any construction means, methods, techniques, sequences or procedures. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.4 If, and only if, requested by Walmart, claims, disputes and other matters in question between Contractor and Walmart relating to the execution of the Work or the interpretation of the Contract Documents may be referred initially to Architect for decision. Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

2.7 CONSTRUCTION BY WALMART OR BY SEPARATE CONTRACTORS

2.7.1 Walmart reserves the right to perform construction or operations related to the Project with Walmart's own forces, and to award separate contracts in connection with portions of the Project or other construction or operations on the site ("**Separate Contractors**"). If Contractor claims that delay or additional cost is involved because of such action by Walmart, Contractor shall make such claim in the time and manner set forth in paragraph 4.2.

2.7.2 Walmart shall provide for coordination of the activities of Walmart's own forces and of each Separate Contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other Separate Contractors and Walmart in reviewing their construction schedules when directed to do so. Contractor shall make any revisions to the Project Schedule deemed necessary by Walmart after such joint review. The revised Project Schedules shall then constitute the schedules to be used by Contractor, Separate Contractors and Walmart until subsequently revised.

2.7.3 Contractor shall afford Walmart and its Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Contractor's construction and operations with the work of Walmart's Separate Contractors.

2.7.4 If part of Contractor's Work depends for proper execution or results upon construction or operations by Walmart or a Separate Contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Walmart any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to report such discrepancies or defects shall constitute acceptance thereof by Contractor and an acknowledgment that Walmart's or Separate Contractors' completed or partially completed construction is fit and proper to receive Contractor's Work, with the sole exception of defects not then reasonably discoverable.

2.7.5 Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of Walmart or Separate Contractors required by the terms of this Contract. Should Contractor damage the work or property of another Separate Contractor, Contractor shall, upon due notice, promptly attempt to settle all claims relating to such damage with such other contractor. If such other contractor initiates a claim by suit or otherwise against

Walmart on account of damage alleged to have been caused by Contractor, Walmart shall notify Contractor who shall defend such proceeding at Contractor's expense, and if any judgment or award against Walmart arises therefrom, Contractor shall pay or satisfy it and shall reimburse Walmart for all attorneys' fees, court costs and other expenses incurred in connection with such claim.

2.7.6 In the event Contractor damages completed or partially completed construction or property of Walmart or property of a Separate Contractor then Contractor shall promptly remedy such damage after receiving notice from Walmart or Separate Contractor. If Contractor fails to promptly remedy damage after notice, then Walmart may, at its option, without waiving any claim for damage, at any time thereafter, deduct the amount of such damage from the Contract Sum, and more specifically, from any amount owed by Walmart pursuant to any Application of Payment.

2.7.6.1 In instances where materials and equipment are purchased by Walmart or Separate Contractors for the benefit of Walmart and delivered to the site, Contractor shall be responsible for coordinating delivery and acceptance of the materials and equipment with the supplier and for suitably storing the materials and equipment on-site or off-site, when necessary, for subsequent incorporation into the Work. Contractor shall store such materials and equipment in accordance with procedures satisfactory to Walmart to protect and maintain condition of such materials and equipment, and establish Walmart's title to such materials and equipment or otherwise protect Walmart's interest, including maintaining appropriate insurance and coordinating off-site storage and transportation to the site for materials and equipment stored off-site. In the event such materials and equipment are lost, stolen, damaged or otherwise unattainable, Walmart may, at its option, without waiving any claim for damages, at any time thereafter deduct the amount of such materials and equipment from the Contract Sum, and more specifically, from any amount owed by Walmart pursuant to any Application of Payment.

ARTICLE 3 **CONTRACTOR**

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 Contractor shall do all field work necessary to lay out and maintain the Work. Without limitation, Contractor shall take field measurements and verify field conditions, shall lay out and be responsible for the accuracy of all elevations, lines, levels, dimensions, measurements, grades, and necessary benchmarks and compare such measurements and conditions to the information in the Contract Documents. Scaled measurements of drawings shall not be used by Contractor unless verified. If Contractor chooses to approximate distances by scaling from the Drawings, Contractor shall do so at its own risk and Contractor acknowledges and agrees that such scaling shall not be deemed by Walmart to be an accurate measurement. Contractor shall not receive any additional compensation or fees as a result of or due to scaling from the Drawings or differences between actual dimensions and the measurements indicated on the Drawings.

3.1.2 In the event Contractor discovers: (1) any error, inconsistency, omission or conflict in the Contract Documents (or between the Contract Documents and verified field measurements or conditions); (2) that the Contract Documents are at variance with any applicable codes or laws; or (3) any inconsistency, conflict or ambiguity within or among the information and communications provided to Contractor by Walmart, Architect or Walmart's Consultants, then Contractor shall promptly report such error, inconsistency, omission, variance, conflict or ambiguity in writing to Walmart, and shall secure written instructions from Walmart prior to proceeding with any Work affected by or involving such error, inconsistency, omission, variance, conflict or ambiguity.

3.1.3 It is recognized that Contractor's review of the Contract Documents is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Nevertheless, if Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Walmart, Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction. Contractor, without an increase in the Contract Sum, shall be liable to Walmart for all costs and damages incurred by Walmart should Contractor proceed with the Work without taking the actions required by paragraphs 3.1.1 and 3.1.2, or should Contractor proceed with Work that Contractor knows involves errors, inconsistencies, omissions, variances or conflicts in the Contract Documents without first reporting such fact to Walmart and receiving written direction from Walmart with respect thereto, including but not limited to Walmart's written agreement or direction regarding the costs of correcting any construction activity involving or affected by any such error, inconsistency, omission, variance or conflict.

3.1.4 Reference to the standards of any technical society, organization or association, or to codes of local and state authorities in the Specifications, Drawings or other Contract Documents, shall mean the latest standard or code adopted and published as of the date of commencement of the Work, unless specifically stated otherwise.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor shall perform and complete all Work in a professional and workmanlike manner, and in a manner reasonably satisfactory to Walmart. Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety and other ramifications thereof, and shall be fully and solely responsible for such means, methods, techniques, sequences or procedures unless, before proceeding with related Work, Contractor gives written notice to Walmart and Architect that Contractor objects to any of such means, methods, techniques, sequences or procedures as unsafe or otherwise inappropriate and obtains written instructions from Architect with respect thereto.

3.2.2 Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by the activities or duties of Walmart, Architect or Walmart's Consultants in connection with the administration of this Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

3.2.3 Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.2.4 Contractor shall perform the Work in compliance with the requirements of Walmart's property insurance carrier. In the event of any conflict between the requirements of such carrier and any Contract Document, Contractor shall immediately notify Walmart. Thereafter, Contractor shall work diligently with Walmart and such carrier to resolve any such conflict so that the Work can be performed in compliance with the requirements of such insurance carrier.

3.2.5 Contractor shall coordinate performance of the Work with Walmart to minimize disruption to, and interference with, Walmart's operations and business due to performance of the Work. Time for performance, whether established by the Project Schedule or any other provision of the Contract Documents, shall be of the essence. Contractor agrees to undertake the Work subject to all conditions as they now exist or may arise. Contractor shall indemnify, defend and hold Walmart harmless from any and all damages caused by delays of Contractor and shall reimburse Walmart for any such damage pursuant to paragraph 3.16 hereof.

3.2.6 If Contractor encounters any substances or conditions at the Project site that are or may be hazardous, including Hazardous Materials and/or Hazardous Waste, and Contractor's scope of Work does not include the disposal, removal or abatement of such substances conditions, then Contractor shall immediately: (1) notify Walmart and Architect in writing; (2) comply with all applicable Compliance Laws; and (3) stop Work in the area. Work in the affected area shall not thereafter be resumed, except by written agreement of Walmart and Contractor, until any Hazardous Material or Hazardous Waste in fact present in the affected area has been disposed of, removed, abated or rendered harmless.

3.2.7 If Contractor fails to comply with any of the requirements contained in the immediately preceding paragraph, Contractor shall be liable to Walmart for all damages incurred by reason of such failure. If Contractor encounters any site conditions involving Hazardous Materials or Hazardous Waste that are not to be removed or abated as part of Contractor's scope of Work, and Contractor complies with the each of the requirements contained in the immediately preceding paragraph but is nevertheless held liable for the cost of remediation of such Hazardous Materials or Hazardous Waste solely by reason of performing Work as required by the Contract Documents, then Walmart will indemnify Contractor for such remediation cost but only to the extent that such remediation is not required due to Contractor's actions or omissions. Notwithstanding any contrary provision, Contractor shall be responsible for any and all Hazardous Materials brought to the site by Contractor or subcontractors.

3.3 EQUIPMENT AND MATERIALS

Contractor shall provide all necessary tools and equipment, including equipment repair and maintenance, to perform the Work in accordance with the Contract Documents. Contractor shall not use any Walmart equipment in any way or for any purpose unless Walmart provides advance written consent to Contractor for it to use Walmart's equipment and designates in writing the equipment that Contractor may use, the times during which Contractor may use the equipment, the locations where Contractor may use the equipment, and the purposes for which Contractor may use the equipment.

3.4 WARRANTY

3.4.1 Contractor warrants to Walmart that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from any defects or deficiencies in workmanship or materials, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. Contractor's warranty does not cover damage or failure of materials to the extent caused by any abuse, modification, improper or insufficient maintenance or improper operation by Walmart. If required by Walmart, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be employed in the performance of the Work. All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by Contractor as directed by the manufacturer unless otherwise specified in the Contract Documents.

3.4.2 Contractor warrants all Work to be free from defects or deficiencies in workmanship for a period of one (1) year following the completion of all of the Work and the acceptance thereof by Walmart (the "**One-Year Warranty Period**"). The Work shall not be deemed to be completed by Contractor and accepted by Walmart until Contractor is entitled to submit an invoice for the Final Payment of the Contract Sum in compliance with the provisions herein. Contractor shall correct any defects or deficiencies in workmanship identified by Walmart and reported to Contractor within the One-Year Warranty Period at no cost to Walmart, and such defects or deficiencies in workmanship shall be corrected within ten (10) days following such notification to Contractor by Walmart. Labor and materials required to correct such workmanship defects or deficiencies (including, without limitation, repairs and replacement materials) will be free of charge during the One-Year Warranty Period. Walmart will require the equipment manufacturer to provide replacement parts for original equipment manufacturer parts that are defective or deficient while the Work is being performed and for a one (1) year period after the grand opening date of the store on the Premises. Contractor shall obtain all replacement parts directly from the equipment manufacturer. In the event Contractor fails to correct such defects or deficiencies in workmanship to Walmart's satisfaction (which is determined in Walmart's sole discretion) within such ten (10) day period, Walmart shall have the right, without prejudice to any other right or remedy that Walmart may have under this Contract, at law or in equity, to (x) correct the defects at Contractor's expense or (y) furnish or cause to be furnished the necessary supplies or equipment and/or employ or cause to be employed the necessary workmen to remedy the defects at the expense of Contractor. Contractor shall, within ten (10) days from receipt of an invoice therefor, reimburse Walmart for any and all costs and expenses incurred in correcting such defects.

3.4.2.1 In addition to, and not in limitation of, Contractor's obligations during the One-Year Warranty Period set forth in paragraph 3.4.2 above, during the ninety (90) day period after the "grand opening" date of the Project, Contractor shall service all refrigeration equipment (including materials and parts) installed on the Premises, including without limitation, refrigeration equipment installed by contractors other than Contractor (the "**90-Day Warranty Period**" and collectively with the One-Year Warranty Period, the "**Warranty Periods**"). Contractor's obligations during the 90-Day Warranty Period include, without limitation, all labor, parts and refrigerant within the scope of the Contract Documents. Contractor shall obtain all replacement parts directly from the equipment manufacturer in accordance with the provisions of paragraph 3.4.2. Contractor shall provide service on all refrigeration equipment and correct any defects or deficiencies identified within the 90-Day Warranty Period at no cost to Walmart, and such defects or deficiencies shall be corrected within ten (10) days following identification thereof. Labor and materials required to service the equipment and correct such defects or deficiencies (including, without limitation, repairs and replacement materials) will be free of charge during the 90-Day Warranty Period. In the event that Contractor fails to service the equipment or to correct such defects or deficiencies to Walmart's satisfaction (which is determined in Walmart's sole discretion) within such ten (10) day period, Walmart shall have the right, without prejudice to any other right or remedy that Walmart may have under this Contract, at law or in equity, to (x) provide such service or correct the defects at Contractor's expense or (y) furnish or cause to be furnished the necessary supplies or equipment and/or employ or cause to be employed the necessary workmen to provide such service or remedy the defects at the expense of Contractor. Contractor shall, within ten (10) days from receipt of an invoice therefor, reimburse Walmart for any and all costs and expenses incurred in correcting such defects or providing such service.

3.4.2.2 In addition, Contractor shall provide the following supplemental warranty services. Contractor shall provide warranty and service on equipment and materials installed regardless of whether that equipment or materials was furnished to the project by Contractor. These warranty service obligations shall include failures during installation and for ninety (90) days beyond store grand opening date. These warranty service obligations shall also include labor, parts, and refrigerant for repairs to equipment covered under the Specifications. Walmart will require equipment manufacturer to furnish replacement parts for failures of OEM parts during installation period and for one (1) year beyond store grand opening date. Contractor shall be responsible for obtaining replacement parts from equipment manufacturer. Walmart will not pay additional costs associated with repair or replacement of materials and parts during the warranty period. Additional costs attributed to equipment failures shall be handled directly with the manufacturer. The supplemental warranty service obligations do not alter or change, but

supplement, the one (1) year warranty obligations mentioned above. Refer to Walmart's Refrigeration Specifications, section 1.06(A).

3.4.3 As a condition to Final Payment for the Work, Contractor shall deliver to Walmart two (2) clean, complete and readable copies of all guarantees and warranties on equipment and materials furnished by all manufacturers and suppliers to Contractor and all Subcontractors, together with duly executed instruments properly assigning the guarantees and warranties to Walmart, and shall also deliver to Walmart two (2) clean, complete and readable copies of all related manufacturer's instructions, maintenance manuals, replacement lists, detailed drawings and any technical requirements necessary to operate and maintain such equipment and materials or needed to maintain the effectiveness of any such warranties.

3.4.4 Contractor shall provide a "Contractor's Statement of Warranty" at Final Completion. The "Contractor's Statement of Warranty" shall be on Contractor's letterhead, signed by an officer of Contractor and shall state that: (1) the Work performed complies with paragraph 3.4.1 of this Contract, and (2) all Work, materials and equipment furnished under this Contract shall be free from failure under ordinary usage for a period of one (1) year from the date of Substantial Completion as defined in paragraph 5.2.2 below.

3.5 SUBCONTRACTORS

3.5.1 As used in this Contract, the term "**Subcontractor**" shall mean any person or entity who has a direct contract with Contractor to perform a portion of the Work on the Project (including materialmen and suppliers) and all other persons or entities (whether such persons or entities are subcontractors, sub-subcontractors, materialmen or suppliers of any tier and for any duration) who provide materials, labor or services directly or indirectly to or for the Project through or under the supervision of Contractor or its Subcontractors.

3.5.2 Within ten (10) days after execution of this Contract, Contractor shall furnish in writing to Walmart a list of the names of all persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed as a Subcontractor for each portion of the Work. Contractor shall submit updates of such list to Walmart if and whenever Contractor proposes to either change a Subcontractor previously listed, or add a Subcontractor not previously listed. Walmart will reply to Contractor if Walmart objects to any proposed Subcontractor. Contractor agrees that it shall not hire: (1) any person or entity to whom Walmart objects as a Subcontractor for the Project; or (2) any person or entity not previously identified in writing to Walmart as required above. In the event Contractor is unable to hire a Subcontractor meeting the approval of Walmart to perform any specific Work on the Project, Walmart shall have the right, without the obligation, to hire another person or entity of Walmart's choosing to perform such work. Should Walmart directly hire a Subcontractor pursuant to this paragraph, Contractor shall provide Walmart with a credit to the Contract Sum equal to the amount of the contract entered into between Walmart and such person or entity. Further, Contractor agrees to cooperate fully with such person or entity and to coordinate all Work on the Project with the work of such person or entity as necessary to ensure the proper and timely completion of all Work on the Project.

3.5.3 If Walmart objects to a well-qualified, proposed Subcontractor without reasonable cause, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by retention of a substitute Subcontractor to whom Walmart does not object, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for objection to a Subcontractor unless such Subcontractor was well qualified, there is no reasonable cause for objection by Walmart, and Contractor has acted promptly and responsively in submitting names as required.

3.5.4 Subcontractors who have previously been designated by Walmart as unacceptable shall be subject to approval by Walmart prior to execution of this Contract. No increase in the Contract Sum or Contract Time shall be allowed for objection by Walmart to a Subcontractor designated by Walmart as unacceptable before execution of this Contract.

3.5.5 Contractor shall furnish to Walmart, from time to time, promptly upon request by Walmart, a true and correct copy of any executed Subcontract.

3.5.6 Contractor shall not change a Subcontractor, person or entity previously selected, if Walmart makes reasonable objection to such change.

3.5.7 Contractor shall be as fully responsible to Walmart for the acts and omissions of each Subcontractor, and of the persons employed by any Subcontractor, and of the persons for whose acts and omissions any Subcontractor may be liable, as it is for the acts and omissions of its own employees.

3.5.8 By appropriate written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by these Contract Documents, assumes toward Walmart. Each subcontract agreement shall preserve and protect the rights of Walmart under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Walmart. Where appropriate, and always with respect to legal compliance obligations, Contractor shall require that similar agreements be executed between Subcontractors.

3.5.9 No provision of this Contract, the Contract Documents, nor of any contract between Contractor and any Subcontractor, shall be construed as an agreement between Walmart and any Subcontractor or any person or entity other than Contractor. No Subcontractor shall have the benefit of any rights, remedies or redress against Walmart pursuant to any of the Contract Documents. In the event of the termination of this Contract by Walmart, Walmart shall have the right (without any responsibility to do so) to assume the rights and responsibilities of Contractor under all or some of Contractor's subcontracts, or purchase or rental agreements which Walmart, in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such contract agreements and commitments which Walmart so chooses to assume, Contractor, upon request from Walmart, shall promptly execute and deliver to Walmart written assignments of such contracts, agreements and commitments which Walmart, in its sole discretion, so chooses to take by assignment. All of Contractor's agreements with Subcontractors shall provide for this assignment.

3.5.10 Wal-Mart Stores, Inc. ("Walmart") is deeply committed to diversity, inclusion, and equal access for everyone. Walmart wants diverse suppliers to have equal opportunity to participate in the performance of company contracts and requests for proposals. Diverse suppliers include any business enterprise that is at least 51% owned and operated by women, minorities, Veterans, or people with disabilities. We encourage our suppliers to subcontract work to diverse suppliers and to use such enterprises to provide goods and services incidental to their business.

3.5.11 Contractor agrees to comply with Walmart's "second tier spend program" as set forth in the bid documents. For each Project awarded, Contractors will: 1) list all subcontractors; 2) complete all fields related to each subcontractor with the most current information available; and 3) for the duration of the Project on a quarterly basis including a final report before the project closes, report all amounts paid to Subcontractors.

3.6 COMPLIANCE

3.6.1 Contractor shall comply with, and give all notices required by, any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to:

- (1) All Environmental Laws (as defined in Exhibit 3.6 hereto), including, without limitation, all those applicable to: (a) the use, generation, storage, handling, discharge, disposal and transport of Hazardous Materials and Hazardous Waste (as defined in Exhibit 3.6 hereto); or (b) Stormwater (as defined in Exhibit 3.6 hereto);
- (2) All Safety Laws (as defined in Exhibit 3.6 hereto); and
- (3) All Worker Verification Laws (as defined in Exhibit 3.6 hereto).

3.6.2 All Work performed by or through Contractor shall be covered by and are subject to the "**Walmart Statement of Ethics**", a copy of which is posted and available to Contractor at http://az301759.vo.msecnd.net/statementofethics/pdf/U.S_SOE.pdf. By signing this Contract, Contractor represents that Contractor has reviewed and will comply with (and will cause its Subcontractors to review and comply with) the Walmart Statement of Ethics in connection with the performance of Work.

3.6.3 Contractor, upon request, shall deliver to Walmart evidence satisfactory to Walmart of Contractor's compliance with any of the terms, conditions and requirements of paragraphs 3.6.1 through 3.6.5, the terms, conditions and requirements of Exhibit 3.6, which is attached hereto and incorporated herein by reference, and all related, corresponding and/or referenced Specification sections and/or Forms (collectively, the "**Compliance Requirements**"). **CONTRACTOR SHALL STRICTLY COMPLY WITH THE COMPLIANCE REQUIREMENTS.** Walmart shall have the right, but not the obligation, to take such steps, including audits, tests and inspections, and make such inquiries, as Walmart deems appropriate to confirm Contractor's compliance with any of the Compliance Requirements.

3.6.4 With respect to Contractor's employees, agents, assigns and Subcontractors, Contractor shall comply with Exhibit 3.6, and Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors and their agents and all other persons performing portions of the Work under the direction or supervision of Contractor. Contractor shall ensure that all of Contractor's and its Subcontractor's employees and agents present a neat, clean and professional appearance and conduct themselves in a businesslike manner at all times while on the Project site and/or Walmart's property. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall, upon Walmart's request, with respect to any individual performing any of the Work under the Contract Documents, obtain from said employee, and submit to Walmart, a certification that the individual has not been convicted of any felony or any misdemeanor involving dishonesty. Any person employed by Contractor or any Subcontractor who, while at the Project site, does not conduct or perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly or otherwise objectionable, shall, at the written direction of Walmart, forthwith be removed from the Project by Contractor and shall not be employed again on the Project site without the prior written consent of Walmart.

3.6.5 Contractor and each Subcontractor shall be responsible and liable for payment in compliance with applicable laws of all taxes relating to the Work, including all sales, consumer, use and similar taxes. Contractor and each Subcontractor shall be responsible and liable for payment of all taxes measured by the wages of all its employees as required by law. Contractor shall indemnify and hold Walmart harmless on account of any such tax assessed against Walmart. In the event that any applicable federal, state, or local laws, statutes, codes, ordinances, rules, or regulations require income tax to be withheld from any payments to be made in connection with the Contract Documents, Contractor shall comply with such requirements in a manner that will absolve Walmart of any withholding liability. Contractor shall be responsible for any and all federal, state and local taxes arising from or relating to the performance or completion of the Work, including, without limitation, all federal, state and local unemployment taxes and federal and state income and social security taxes to be withheld from wages. Walmart is hereby authorized to file, on behalf of Contractor, any and all reports, returns or other documents which are required of Contractor by any governmental authority and which Contractor shall have failed to file in accordance with the provisions of this Contract. Contractor further authorizes and empowers Walmart to pay on behalf of Contractor any and all taxes, fees and assessments which Contractor shall have failed to pay as required by the provisions of this Contract, together with all required penalties and interest, and Contractor shall promptly reimburse Walmart therefor within ten (10) days after receiving an invoice for such amounts.

3.6.6 Contractor shall be responsible to Walmart for the acts and omissions of Contractor's employees, Subcontractors, and their respective agents and employees and all other persons performing portions of the Work under the direction of Contractor or any Subcontractor.

3.7 CONTRACTOR'S SUPERINTENDENT(S) AND TEAM

3.7.1 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work on each day that Work is performed on the Project. Contractor's superintendent(s) shall represent Contractor on the Project site and shall have authority to bind Contractor with respect to all matters pertaining to the performance of Work on the Project. Contractor's superintendent(s) shall devote total and full time and attention to the requirements of the Contract Documents and shall not work on any other project or construction matter until final completion of the Work hereunder. All communications from Contractor to Walmart shall be given by or through Contractor's superintendent(s); however, all important communications shall be given in writing.

3.7.2 Contractor's superintendent(s) shall remain subject to approval by, Walmart, which approval may be withheld by Walmart in its reasonable discretion. Thereafter, Contractor's superintendent(s) shall not be discontinued by Contractor and no new individual shall be designated as Contractor's Superintendent without the prior, written approval of Walmart, which approval shall not be unreasonably withheld. If such approval is granted by Walmart, Contractor shall notify Walmart, in writing, of the person whom it intends to employ as its replacement superintendent. Walmart shall have the right to review the qualifications of, and conduct interviews with, such person. With reasonable promptness after such review and interview, Walmart shall indicate to Contractor whether or not Walmart approves of the person selected by Contractor as superintendent. Contractor shall not employ any person as Contractor's Superintendent unless Walmart agrees to the selection of such person as provided above.

3.7.3 Contractor shall perform any work required hereunder and shall complete the Work within the Contract Time and shall cause its original management and supervisory team to continue their office and job site duties on a full-time basis through the completion of the Work and at any other time Contractor has any Work being performed on the Project regardless of the date or condition of Project completion. Contractor will perform any Work that is directed by Walmart's Construction Manager to achieve Substantial Completion by the date established therefor.

3.8 CONSTRUCTION SCHEDULES AND REPORTS

3.8.1 Within ten (10) days after commencement of construction, Contractor shall submit to Walmart a “**Project Schedule**” in CPM (critical path method) format that provides for the expeditious and practical execution of the Work in accordance with the Contract Time, sets forth the time for performance and the dates for commencement and completion of each significant aspect of the construction work for the Project on a critical path basis, and sets forth the anticipated purchase and delivery dates for all major materials and equipment to be employed in the performance of the Work. Additionally, Contractor shall cause the Project Schedule to include reasonable allowances for periods of time required for Walmart’s review and approval and for inspections and approvals by the various governmental authorities having jurisdiction over the Project. If and to the extent that Work is not being performed in compliance with the Project Schedule most recently prepared by Contractor, Contractor promptly shall prepare and submit for Walmart’s approval an updated Project Schedule to display the manner in which Contractor will complete the Work within the Contract Time. Contractor shall perform the Work in accordance with the most recent Project Schedule approved by Walmart, except that the approval of any Project Schedule by Walmart shall not relieve Contractor of its obligation to complete the Work within the Contract Time. If requested by Walmart at any time, or from time to time, Contractor shall submit the Project Schedule and all updates thereto in native electronic format (*e.g.*, Primavera or Microsoft Project).

3.8.2 Contractor shall on each business day prepare a “**Daily Force and Activity Report**” on a form approved by Walmart identifying, among other items, the trade and number of individuals working on the Project and the types of Work being performed. Each Daily Force and Activity Report shall be maintained by Contractor and delivered to Walmart within two (2) business days if ever requested by Walmart.

3.8.3 Contractor shall prepare a “**Materials Status Report**” as described in this paragraph not later than thirty (30) calendar days after this Contract is awarded. The Materials Status Report shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication, and the scheduled delivery dates for each item. Whenever Contractor learns of an event or circumstance that may delay a scheduled delivery date shown on the Materials Status Report, it shall: (1) promptly notify Walmart of such event or circumstance, including the effect of such event on the Project Schedule; and (2) if requested by Walmart, consult with Walmart, Architect and/or Walmart’s Consultants to develop and implement procedures that mitigate the effect of such event on the Project Schedule. Contractor will furnish to Walmart, upon request, proof of materials order placement sufficient to assure delivery in a timely manner in compliance with the requirements of the Contract Documents.

3.8.4 Contractor shall hold weekly progress meetings at the job site, or at such other time and place as is acceptable to Walmart. At such meetings, the progress of the Work shall be reported in detail with reference to the then current Project Schedule and all other construction schedules. Each Subcontractor then performing work on the Project shall have a competent representative present at each weekly meeting to report on the condition of its work and to receive information regarding the performance of future work by the Subcontractor. Meeting minutes shall be prepared by Contractor and distributed to Walmart and other meeting attendees by 9:00 a.m. on Monday of the immediately following week (or sooner if reasonably requested by Walmart or required for purposes of communicating time-sensitive information).

3.8.5 Contractor shall prepare and keep current, for Walmart’s approval, a “**Schedule of Submittals**,” in a form reasonably acceptable to Walmart, which shall be coordinated with the then current Project Schedule and shall allow Walmart reasonable time to review submittals. An up-to-date Schedule of Submittals shall accompany each Application for Payment.

3.8.6 Contractor shall at all times keep just and true copies of the Project Schedule (and all previous drafts thereof), each and every Daily Force and Activity Report, the Material Status Report (and all previous drafts thereof), the Schedule of Submittals (and all previous drafts thereof) and the minutes prepared by Contractor for each and every meeting held pursuant to paragraph 3.8.4 at its facility throughout the Project and for a period of five (5) years after the earlier of the completion of the work or the termination of this Contract, even if copies of any such materials have been previously delivered to Walmart. Contractor shall deliver to Walmart copies of any such materials promptly following Walmart’s request therefor and shall grant Walmart and/or its duly authorized representatives the right, at all reasonable times during the term of this Contract and for such five (5) years period to enter into Contractor’s facility to examine and/or retrieve such materials.

3.9 DOCUMENTS AND SAMPLES AT THE SITE

Contractor shall maintain at the site for Walmart one (1) record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. These shall also be available to Walmart and/or Architect or Walmart’s Consultants upon request and shall be delivered to Walmart upon

completion of the Work. Contractor shall be responsible and liable to Walmart for accurately and completely recording all of the information required by this paragraph on the marked set of drawings and, at the conclusion of the work on the Project, Contractor shall provide Walmart with one (1) full and complete set of reproducible as-built drawings, showing all Work performed on the Project as set in place during construction and all changes made during construction from the original Drawings and Specifications.

3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.10.1 “**Shop Drawings**” are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor to illustrate some portion of the Work.

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

3.10.3 “**Samples**” are physical samples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.10.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to conform to the information and design concepts expressed in the Contract Documents. Any review by Walmart, Architect or Walmart’s Consultants of Shop Drawings, Product Data, Samples and similar submittals is for the limited purpose of checking for conformance with the information and design concepts expressed in the Contract Documents and is subject to the limitations set forth in paragraph 2.6.3 herein.

3.10.5 Contractor shall review, approve and submit to Walmart Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Walmart or of Separate Contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

3.10.6 Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Walmart. Such Work shall be in accordance with approved submittals.

3.10.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.10.8 Walmart shall have no obligation to review any submittal from Contractor unless the actions required by paragraph 3.10.7 above have been taken and the submittal has been reviewed and marked by Contractor to indicate field conditions, proposed deviations from the Contract Documents and any other matters affecting design intent. Contractor shall be responsible to Walmart for delays caused by Contractor’s failure to comply with the provisions of this paragraph and of paragraph 3.10.7 above.

3.10.9 Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents as a result of the approval of Shop Drawings, Product Data, Samples or similar submittals by Walmart, Architect or Walmart’s Consultants, unless Contractor has specifically identified such deviation in writing at the time of submittal and Contractor has thereafter received written approval to the specific deviation from Walmart.

3.10.10 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Walmart, Architect or Walmart’s Consultants on previous submittals.

3.10.11 Informational submittals upon which Walmart is not expected to take responsive action may be so identified in the Contract Documents.

3.10.12 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Walmart, Architect and Walmart’s Consultants shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.11 USE OF SITE

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

3.11.2 Contractor shall be solely responsible for all material or equipment stored by it or by any Subcontractors on the Project site. Beginning with the commencement of construction and continuing through to Final Completion of the Project, Contractor shall be responsible for the security of the Project site, including all tools, materials, equipment and completed Work on the site. Contractor, without any increase in the Contract Sum, shall take such actions as may be necessary to maintain such security, including, but not limited to the erection of temporary security around the Project site. Contractor shall properly safeguard and store any combustible materials necessary to the Work so as to protect against the possibility of fire or other damage. Contractor shall be solely responsible for all damage, cost or expense caused by the use or storage of combustible materials at the Project site. Contractor shall provide temporary weathertight enclosures for all exterior openings, and shall be responsible for protecting the Work from weather conditions. At the end of each day Contractor shall close all temporary enclosures and secure all exterior doors.

3.11.3 Contractor shall train the individuals who perform Work under the Contract Documents on the use of any and all material and equipment used at the Project site.

3.12 CUTTING AND PATCHING

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

3.12.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Walmart or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Walmart or a Separate Contractor except with written consent of Walmart and of such Separate Contractor. Walmart agrees that such consent shall not be unreasonably withheld and Contractor agrees that it shall not unreasonably withhold from Walmart or a Separate Contractor Contractor's consent to cutting or otherwise altering the Work.

3.13 CLEANING UP

3.13.1 Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish resulting from operations under the Contract. At Substantial Completion of the Work, Contractor shall remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus materials and shall repair any and all damage to the premises and other property of Walmart caused by such removal. Contractor shall keep the job site free of improperly stored or unattended combustible materials. At the end of each day, the Project site shall be left "broom clean," and all boxes, crates, trash, etc. shall be placed in a dumpster provided by Contractor.

3.13.2 If a dispute arises among Contractor, Separate Contractors and/or Walmart as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Walmart may clean up and allocate the cost among those responsible as Walmart determines to be just.

3.14 ACCESS TO WORK

Contractor, upon request, shall provide Walmart, Architect and Walmart's Consultants with access to the Work in preparation and progress wherever located. Contractor shall provide facilities for such access.

3.15 ROYALTIES AND PATENTS

Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of patent rights and shall hold Walmart, Architect and Walmart's Consultants harmless from loss on account thereof. Contractor shall not be responsible for such defense or loss when copyright violations are contained in the Contract Documents, unless Contractor has reason to know of such violation and fails to notify Walmart of it, in writing, prior to the performance of any Work affected by or involving any design, process or product in question.

3.16 INDEMNIFICATION

3.16.1 To the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless Walmart and its affiliates and its and their respective directors, stockholders, members, managers, officers, employees, agents, consultants, representatives, successors, transferees and assigns (collectively, the “**Walmart Indemnified Parties**”) from and against any and all Damages arising from, relating to or associated with any actual or alleged (1) actions or omissions of Contractor or its employees, agents, representatives, or Subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the performance of the Work hereunder, including, without limitation, (a) any lien, security interest, claim or encumbrance in favor of any person or entity making a claim by reason of having provided labor, materials or equipment relating to the Work, and (b) any injury, damage, harm or loss arising from, relating to or in any manner connected with the “release” or “threatened release” of Hazardous Materials, contaminants, oil or radioactive materials at or from any Walmart premises as a result of or connected with Contractor’s performance of the Work, even if not discovered or alleged until after the termination of the Contract, and/or (2) any breach, violation or default by Contractor or its employees, agents, representatives, or Subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with Contractor’s obligations under the Contract Documents, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, any Compliance Laws. Contractor’s obligations to indemnify and defend the Walmart Indemnified Parties hereunder shall apply unless it shall be ultimately determined by a final judicial decision from which there is no further right to appeal that the Walmart Indemnified Parties are not entitled to indemnification under this Contract. Further, in the event that it is ultimately determined by a final judicial decision from which there is no further right to appeal that a portion of the fault is attributable to the Walmart Indemnified Parties, Contractor’s obligations on the indemnity will be proportional to the proportional fault of Contractor and the Walmart Indemnified Parties.

3.16.2 If a Walmart Indemnified Party has a right against a person (other than another Walmart Indemnified Party or one of Walmart’s insurers) with respect to any Damages paid to such Walmart Indemnified Party by Contractor, then Contractor, to the extent of such payment, shall be subrogated to the right of such Walmart Indemnified Party.

3.16.3 If requested by Contractor, the Walmart Indemnified Parties shall cooperate (1) in contesting any claim for Damages, which Contractor elects to contest, or (2) if appropriate, in making any counterclaim against the person asserting the claim, or any cross-complaint against any person; provided, that Contractor shall reimburse the Walmart Indemnified Parties for any reasonable out-of-pocket expenses incurred by them in so cooperating.

3.16.4 If a Walmart Indemnified Party receives notice of the assertion, filing or service of any lawsuit, claim, demand, action, liability or other matter that is or may be covered by this indemnity, Walmart shall promptly notify Contractor thereof in writing, provided that no failure by Walmart to give timely notice shall relieve Contractor of liability hereunder. Upon receipt of notice, from whatever source, of any such lawsuit, claim, demand, action, liability or other matter covered by this indemnity, Contractor shall immediately take necessary and appropriate action to protect the Walmart Indemnified Parties’ interest, with counsel satisfactory to Walmart, provided that, Walmart, at its sole and absolute discretion, retains the right to select and appoint counsel to defend any Walmart Indemnified Party and/or to replace any counsel that Walmart determines is unacceptable with new counsel (and the fees and expenses of such new counsel shall be payable by Contractor). Any counsel provided by Contractor to defend any Walmart Indemnified Party shall accept, acknowledge receipt of, and conduct the defense of such Walmart Indemnified Party in accordance with, Walmart’s Indemnity Counsel Guidelines. The Walmart Indemnified Parties shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against them.

3.16.5 To the greatest extent permitted by law, the indemnification obligations set forth in the Contract Documents (1) are independent of, and will not be limited by, each other or any insurance obligations in the Contract Documents (whether or not complied with) or any limits on damages or benefits payable under workers’ compensation or other statutes, (2) are not diminished or limited in any way by any insurance carried in whole or in part by Walmart, which shall in all cases function in excess of these indemnification obligations, and (3) will survive the termination and/or completion of this Contract until all matters covered by the indemnification obligations are fully and finally barred by applicable law. The indemnification provisions in the Contract Documents shall include all applicable law affecting the validity or enforceability of those provisions, and the applicable law will operate to amend those provisions to the minimum extent necessary to bring the provisions into conformity with the applicable law. The provisions, as modified, shall continue in full force and effect. The indemnification obligations of Contractor under the Contract Documents shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to any of the Walmart Indemnified Parties.

3.16.6 The term “**Damages**,” as used in this Contract, shall mean any and all lawsuits, claims, actions, injuries, damages (including, but not limited to, punitive, consequential and exemplary damages), losses, fines, penalties, sanctions, deficiencies, judgments, awards, costs, expenses (including, without limitation, reasonable fees, disbursements, and costs of

attorneys, accountants, experts and investigators), settlement payments, liabilities, remediation expenses, corrective action costs, and other obligations, including, without limitation, property damages and bodily or personal injuries, illnesses and deaths (whether or not such injury is physically manifest, or emotional in nature without any attendant physical manifestation of such injury), and in each case regardless of whether such matters are groundless, fraudulent or false.

3.16.6 ALL INDEMNIFICATION OBLIGATIONS IN PARAGRAPH 3.16 OF THIS CONTRACT SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE WALMART INDEMNIFIED PARTIES' BENEFIT, REGARDLESS OF THE CAUSE(S) OR ALLEGED CAUSE(S) OF THE CLAIMS.

3.17 LABOR

3.17.1 Contractor agrees, and shall require all Subcontractors to agree, that no labor dispute of any kind involving Contractor or any Subcontractor, or their employees or agents shall be permitted to occur or be manifested on the Project, and Contractor agrees, and shall require all Subcontractors to agree, to that end to only employ persons on the Work who will work at all times in harmony with other persons employed on the Project.

3.17.2 Contractor agrees, and shall require each Subcontractor to agree, that its employees shall not participate in or accede to any work stoppage, slow down or any type of interference with the performance of work by other persons on the Project which may occur as a result of any labor dispute involving its employees.

3.17.3 Should there be a work stoppage, slow down or any type of interference with the performance of Work on the Project involving Contractor or its employees or a Subcontractor or any of their employees resulting from a labor dispute and which, in the judgment of Walmart, will cause, or threatens to cause, delay in the progress of construction, then upon twenty-four (24) hours written notice (or such longer notice period as may be required pursuant to applicable law), Walmart shall have the right to declare Contractor in default under this Contract and take such steps as are necessary to finish the uncompleted portion of the Work. In such event and to the extent permitted by applicable law, Walmart shall have the right to take possession of and use all of Contractor's materials and equipment intended for use on the Work. The cost of completion, including all expenses, attorney's fees and costs incurred in resolving the labor dispute, shall be charged against Contractor's remaining interest in the Contract Sum (unless otherwise required by applicable law).

3.17.4 Should Contractor and/or any Subcontractors become involved in a labor dispute resulting in a work stoppage, slow down or any type of interference with the progress of construction and resulting in an increase in interest charges to Walmart, Contractor shall be liable to Walmart for this increased cost (unless otherwise required pursuant to applicable law). If Contractor's remaining interest in the Contract Sum is less than the cost of completion, Contractor shall pay Walmart such deficit within thirty (30) days after written demand for such excess has been made upon it by Walmart (or such longer period as may be required by applicable law).

3.17.5 Harmony clause provisions similar to the provisions of the immediately preceding paragraphs shall be included in all of Contractor's and/or Subcontractor's subcontracts relating to the Work.

ARTICLE 4 CHANGES IN THE WORK

4.1 GENERAL

4.1.1 Changes in the Work, adjustments in the Contract Sum or adjustments in the Contract Time may be accomplished after execution of this Contract only with the written consent of Walmart pursuant to the execution of a valid Change Order. Contractor expressly agrees that it shall have no right to rely upon any additions, deletions, or revisions to the Work or Schedule which are directed orally and are not authorized by a written Change Order signed by Walmart, and further agrees that no claim for an adjustment in the Contract Sum or the Contract Time or otherwise will be allowed based on Contractor's reliance upon such oral direction. Architect and Walmart's Consultants shall not be deemed as agents of Walmart for these purposes. Contractor shall not be entitled to any compensation in addition to the Contract Sum for extra work, overtime work or changes in the Work of any kind unless such work is approved in writing by Walmart prior to the commencement of such work and shall not be entitled to rely on any oral statements of Walmart's Construction Manager, Walmart's Consultants or Architect in this regard.

4.1.2 A “**Change Order**” is a written direction to Contractor in an electronic form designated as a Change Order and issued by Walmart after execution of this Contract, authorizing or requiring a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. Contractor shall not commence the performance of any Work that entitles Contractor to an increase in the Contract Sum or an extension of the Contract Time without first receiving an Authorization to Proceed (as described in paragraph 4.2 below) that is signed by Walmart. A Change Order signed by Contractor indicates its agreement therewith, including any adjustments in compensation or the time for Substantial Completion of the Work as a result of the issuance of the Change Order and shall constitute a final settlement of all matters relating to the work required by the Change Order, including all delays, compression, impact, overtime or other costs or expenses associated therewith.

4.1.3 The adjustment to the Contract Sum resulting from a change in the Work performed pursuant to a valid Change Order shall be determined in one or more of the following ways: (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data, as outlined in Exhibit 4.1, to permit evaluation; (2) a unit price basis stated in the Contract Documents or subsequently agreed upon, subject to any applicable terms or procedures set forth in Exhibit 4.1; (3) a time and material basis, subject to any applicable terms or procedures set forth in Exhibit 4.1 or paragraph 4.1.3.1 below; or (4) pursuant to paragraph 4.1.3.2 below.

4.1.3.1 In the event the Contract Sum is adjusted on a time and materials basis pursuant to the terms of Exhibit 4.1, the parties agree that (1) the increase in the Contract Sum on account of the “time” component shall be calculated based on the rate of wages actually paid by Contractor or its Subcontractor, as applicable, to the construction workers and field engineering personnel engaged in the applicable Work for every hour that such construction workers and field engineering personnel perform the applicable Work, and (2) the increase in the Contract Sum on account of the “materials” component shall be the amount reasonably and actually paid for materials incorporated into the applicable Work by the party (*i.e.*, Contractor or Subcontractor) actually responsible for their incorporation. Pursuant to paragraph 4.3, Contractor shall permit Walmart and Walmart’s Consultants to audit Contractor’s books and records and those of its Subcontractors for purposes of verifying the proper nature and amount of any amount owed for such time and materials adjustments.

4.1.3.2 Notwithstanding any other provision of this Contract, if Walmart and Contractor cannot agree about whether a particular change to, or concerning, the Work warrants an increase in the Contract Sum and/or an extension of the Contract Time, or about the amount of the increase and/or extension that is appropriate for a given change, then Walmart may require Contractor to accept, immediately commence and perform such change by issuing a Change Order with respect thereto. Contractor agrees that it shall comply promptly and fully with any Change Order issued by Walmart pursuant to this paragraph (and acknowledges that Walmart has no adequate remedy at law should Contractor refuse to do so, such that Walmart may enforce Contractor’s compliance with the terms of this paragraph as set forth in paragraph 8.2.4 below). In a Change Order issued pursuant to this paragraph, Walmart shall, in appropriate circumstances, include what it considers a reasonable increase in the Contract Sum and/or a reasonable extension of the Contract Time, if any. Contractor shall not be entitled to any increase in the Contract Sum and/or any extension of the Contract Time beyond that indicated in the Change Order issued by Walmart, except and only as later agreed by Walmart and Contractor.

4.1.4 Contractor agrees that the amount to be paid to Contractor as set forth in any Change Order shall constitute full compensation to Contractor for all Work required in connection with the Change Order and full compensation for all acceleration, delay, loss of efficiency, inconvenience or other costs, expenses or damages which have been or may be incurred by Contractor as a result of the issuance of the Change Order and/or the performance of the Work required in connection with the Change Order. Contractor acknowledges that the amount payable to Contractor and its Subcontractors on account of on-site overhead (general conditions costs), home office overhead, insurance, bonding, supervision, or other similar expenses in connection with any Change Order shall be subject to the express limitations set forth in Exhibit 4.1.

4.1.5 The unit prices, if any, identified in this Contract shall apply only to changes in the Work and if specifically so directed in a written Change Order signed by Walmart. Absent such direction (and absent specific agreement by Walmart in a signed Change Order to another method of compensation), Contractor shall be compensated for changes in the Work pursuant to the provisions of Exhibit 4.1.

4.1.6 Walmart, without invalidating this Contract, may at any time, order changes in or to the Work consisting of additions, deletions or other revisions by delivering a “**Construction Change Directive**” to Contractor, and Contractor shall be required to follow the procedures set forth in paragraph 4.2 below following receipt of any such Construction Change Directive from Walmart.

4.1.7 Walmart shall also have the authority to require, by delivery of a written order, minor changes in the Work which shall not entitle Contractor to an adjustment in the Contract Sum or Contract Time if such minor change is not

inconsistent with the intent of the Contract Documents. Walmart and Contractor shall be bound by any such order and Contractor shall carry out such written orders promptly.

4.2 CHANGE ORDER PROCEDURES

4.2.1 In the event Walmart directs Contractor to make a change in or to the Work by delivering a Construction Change Directive, or in the event Contractor believes that it is entitled to an increase in the Contract Sum or an extension of the Contract Time for any reason whatsoever, including without limitation as a result of its discovery of any of the items described in paragraph 3.1.2, a claim of a Reasonably Unforeseen Condition, a claim of Excused Delay, or otherwise, Contractor shall be obligated to deliver to Walmart a **“Preliminary Change Request”** in strict accordance with all terms, conditions and procedures set forth in Exhibit 4.1, which Preliminary Change Request shall be in an electronic form designated by Walmart from time to time. Contractor shall deliver to Walmart a Preliminary Change Request (1) within seven (7) days after Contractor’s receipt of any Construction Change Directive from Walmart and (2) within the later of seven (7) days after the occurrence of any event giving rise to any claim or seven (7) days after Contractor first recognizes the condition giving rise to such claim, whichever is later. Each Preliminary Change Request shall describe in detail the condition that Contractor believes entitles it to an increase in compensation or extension in time. Failure by Contractor to timely deliver to Walmart a complete and accurate Preliminary Change Request shall mean that Contractor has waived the right to request or make a claim for any increase in compensation or extension in the time for performance and shall be obligated to perform all work required by or in connection with any occurrence or condition giving rise to the assertion without increase in the Contract Sum, extension of the Contract Time or other compensation or remedy of any kind.

4.2.2 Following Walmart’s receipt of a timely delivered Preliminary Change Request, Walmart shall thereafter investigate the condition described in the Preliminary Change Request (and Contractor shall fully cooperate with Walmart’s efforts in this regard, including by delivering additional information requested by Walmart) and shall, within seven (7) days following its receipt of the Preliminary Change Request, issue one of the following responses to Contractor in an electronic form designated by Walmart from time to time: (i) a **“Notice Not to Proceed,”** notifying Contractor that the scope of work described in the Preliminary Change Request should not be performed for the Project; (ii) a **“Reject Change,”** notifying Contractor that the Preliminary Change Request is rejected, the work described in the Preliminary Change Request must be performed by Contractor but the Contract Sum will not be adjusted; or (iii) an **“Authorization to Proceed,”** authorizing the performance of the work described in the Authorization to Proceed. The parties agree that in the event Walmart fails to respond to Contractor in writing within seven (7) days following Walmart’s receipt of a timely delivered Preliminary Change Request, Walmart shall be deemed to have denied the Preliminary Change Request and directed Contractor not to proceed with scope of work referred to in the Preliminary Change Request.

4.2.2.1 In the event a Preliminary Change Request is denied by Walmart, Contractor shall be obligated to continue to properly perform the Work in accordance with the Contract Documents. Should Contractor dispute such denial, Contractor may pursue a claim against Walmart pursuant to the terms of paragraph 8.3; provided, however, that (i) Contractor shall be obligated to continue performing the Work hereunder pursuant of the terms of paragraph 8.2.4, and (ii) Contractor’s sole and complete remedy with respect to any successful claim made pursuant to paragraph 8.3 (including, but not limited to, claims based on changes to the Work or delay, impact or acceleration) shall be the actual increased cost of labor and material, if any, incurred by Contractor as a result of the occurrence or condition giving rise to the claim, calculated pursuant to the terms of Exhibit 4.1 (as supplemented by the terms of paragraph 4.1.3.1).

4.2.2.2 The delivery of an Authorization to Proceed by Walmart shall constitute Walmart’s authorization to, and requirement that, Contractor proceed with the work described in the Authorization to Proceed, but such delivery shall not constitute a Change Order hereunder or any agreement as to any increase in the Contract Sum or extension in the Contract Time.

4.2.3 Following Contractor’s receipt of an Authorization to Proceed, Contractor agrees that it shall immediately commence and perform the work described in the Authorization to Proceed. Contractor agrees that it shall comply promptly and fully with any Authorization to Proceed issued by Walmart (and acknowledges that Walmart has no adequate remedy at law should Contractor refuse to do so, such that Walmart may enforce Contractor’s compliance with the terms of this paragraph as set forth in paragraph 8.2.4 below). Within thirty (30) days following the date that Contractor delivered the Preliminary Change Request, Contractor shall, in strict accordance with all terms, conditions and procedures set forth in Exhibit 4.1, deliver to Walmart a **“Change Request”** in an electronic form designated by Walmart from time to time which Change Request shall, without limiting the other terms set forth in Exhibit 4.1, include all particulars relating to the requested changes in the scope of the Work, the Contract Sum and the Contract Time, as applicable. Failure by Contractor to timely deliver to Walmart a complete and accurate Change Request shall mean that Contractor has waived the right to request any increase in compensation or extension in the time for performance and shall be obligated to perform all work required by or in

connection with any occurrence or condition giving rise to the assertion without increase in the Contract Sum, an extension of the Contract Time or other compensation or remedy of any kind.

4.2.4 Within twenty (20) days following Walmart's receipt of a timely delivered Change Request, Walmart shall take one of the following steps (i) issue to Contractor a request for additional information to allow Walmart to further evaluate the Change Request or otherwise provide Contractor with Walmart's suggestions regarding objectionable items included in the Change Request or deficiencies in the Change Request, (ii) reject the Change Request (and the parties expressly acknowledge that Walmart may, without limitation, reject a Change Request if it differs from the previously issued Authorization to Proceed); or (iii) issue to Contractor a Change Order in an electronic form designated by Walmart authorizing the requested adjustments set forth in the Change Request. If Walmart elects to proceed as described in clause (i) above, the Contractor shall have fourteen (14) days to deliver to Walmart the requested information or otherwise deliver a revised Change Request, and Walmart shall again have twenty (20) days following receipt of such additional information or revised Change Request to proceed in one of the manners described above.

4.2.5 Failure by Contractor to follow the procedures set forth in paragraph 4.2 in the event Contractor believes it is entitled to additional compensation or additional time for any reason shall mean that Contractor has waived the right to request such an increase or extension and shall be obligated to perform all work required by or in connection with any occurrence or condition giving rise to the assertion without increase in the Contract Sum, an extension of the Contract Time or other compensation or remedy of any kind.

4.3 AUDIT

Contractor shall at all times keep just and true books, records, and accounts at its facility showing the actual costs and expenses that Contractor incurs in connection with the Work. Contractor shall permit Walmart or its duly authorized representative to audit its books and records, and shall require all Subcontractors to permit Walmart or its duly authorized representative to audit their books and records relating to this Contract and/or the Project. Contractor shall produce, and shall require its Subcontractors to produce, any and all data which Walmart may request for any such purpose and shall grant Walmart and/or its duly authorized representative the right, at all reasonable times during the term of this Contract and for two (2) years after the earlier of the completion of the Work or the termination of this Contract, to enter into Contractor's facility to examine and audit the books, records and accounts that relate to this Contract and/or the Project. Without limitation, Contractor shall, and shall require its Subcontractors to, keep and make available to Walmart such full and detailed accounts as may be necessary to reflect its operations with respect to changes and extras, and the system adopted shall be such as is satisfactory to Walmart. In regard to the foregoing and generally, Contractor hereby authorizes Walmart, and shall require all Subcontractors to authorize Walmart, to check directly with its suppliers of labor and materials the charges for such labor, material and other items underlying Contractor's Applications for Payment and the balances due on such charges and to obtain sworn statements and waivers of lien from any such suppliers.

ARTICLE 5

CONTRACT TIME AND COMPLETION

5.1 COMMENCEMENT AND PERFORMANCE

5.1.1 Notwithstanding paragraph 1.1.15 or any other provision, Contractor shall not, except by written agreement or written instruction of Walmart, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 7. The Contract time shall not be extended due to any delay in commencement resulting from compliance with the immediately preceding sentence.

5.1.2 Contractor shall continuously and diligently perform, forward and prosecute the Work required by this Contract subject only to Excused Delays as defined herein. Contractor shall efficiently coordinate the Work with any work being performed by Walmart or any other contractor so as not to interfere with, disrupt or delay any work required to be performed by any of said persons and, in any event, so as not to interfere with, disrupt or delay the progress required to conform to the Substantial Completion Date.

5.1.3 In order to achieve completion of the Work by the time established in this Contract, as it may be extended pursuant to the provisions of this Contract, Contractor agrees, without any increase in the Contract Sum or any additional compensation of any kind, that it shall sequence and perform its Work in whatever areas of the site are available, whenever and for whatever duration they are available, shall increase its manpower assignments or levels, whenever and for whatever duration is required to take advantage of all Work that is capable of being performed at any particular time on the Project site (and shall not decrease its manpower assignments or levels unless there are no areas at the Project site where such personnel

can be utilized and if such a decrease is made shall immediately increase manpower to take advantage of any Work area as soon as it becomes available).

5.1.4 Without limiting the foregoing, Contractor agrees, without any increase in the Contract Sum or any additional compensation of any kind, to assign more personnel, work overtime and/or weekends and take such other appropriate measures as are necessary to overcome delays attributable to Contractor or its Subcontractors and/or other delays that do not constitute Excused Delays. In addition, if requested by Walmart, Contractor shall revise and modify the schedule for the Work in response to any delay, and shall prioritize the Work in such fashion as to allow Walmart to use and occupy as much of the Project as possible for its intended purpose on or before the date for Substantial Completion originally established in this Contract. Without limiting the foregoing, Contractor agrees that any materials to be furnished by Contractor shall be furnished in sufficient time to enable Contractor to perform and complete its Work within the Contract Time and in accordance with the Contract Documents, and Contractor will furnish to Walmart, upon request, proof that materials orders have been placed in sufficient time to assure delivery in a timely manner.

5.2 SUBSTANTIAL COMPLETION

5.2.1 Timely completion of the Work is of the essence in this Contract and by execution of this Contract, Contractor confirms that the Contract Time is a reasonable period for completion of the Work on the Project.

5.2.2 “**Substantial Completion**” of the entire Work is hereby defined as the last to occur of the following:

- (1) Contractor procures and delivers to Walmart all certificates, permits, approvals and consents with respect to Contractor’s Work required under applicable law for occupancy and use of the Project (except such certificates, permits, approvals or consents that cannot be procured due to the fault of Walmart, in which event this condition shall not apply to such extent);
- (2) the Work is properly and sufficiently complete in accordance with the Contract Documents to allow Walmart to occupy and utilize the Project for its indicated purpose, subject only to minor punch list items that would not, in Walmart’s discretion, interfere with Walmart’s intended operations; and
- (3) the Project site has been left in a thoroughly clean condition, all boxes, crates, etc. have been hauled off of and away from the Project site at Contractor’s expense, and Contractor has thoroughly washed and cleaned all glass, replaced broken glass, cleaned hardware, removed paint stains, spots, smears, marks and dirt from all surfaces, cleaned fixtures and washed tile floors and all exposed concrete so as to present clean work to Walmart for acceptance.

5.2.3 Contractor shall be deemed to have achieved “Substantial Completion” of a portion of the Work which Walmart agrees to accept separately only upon satisfaction of the requirements set forth in subparagraphs 5.2.2(2) and 5.2.2(3) above as applicable to such portion of the Work.

5.2.4 Warranties required by the Contract Documents shall not commence until the date of Substantial Completion of all of the Work, except and only to the extent that any discrete portion of the Work is actually used or occupied by Walmart for its indicated purpose on an earlier date (in which case the warranties shall be deemed to have commenced on the date of such use or occupancy with respect to that discrete portion only). The term “**day**” as used in the Contract Documents shall mean calendar day unless otherwise specifically noted.

5.2.5 When Contractor considers that the Work, or a portion thereof which Walmart agrees to accept separately, is Substantially Complete, Contractor shall so notify Walmart in writing, and Walmart and Contractor shall perform a punch-list inspection and audit that shall consist of a per square foot assessment/measurement of the Work, and Contractor shall prepare and submit to Walmart for Walmart’s approval a comprehensive list of items to be completed or corrected. Following receipt of Contractor’s list, Walmart will conduct a review to determine whether the Work, or designated portion thereof, is Substantially Complete. If Walmart’s inspection discloses any item, whether or not included on Contractor’s list, which indicates that the Work is not Substantially Complete, Contractor shall, before Substantial Completion shall be deemed to have been accomplished, complete or correct such item upon notification by Walmart. Contractor shall then submit to Walmart a request for another inspection to determine whether Substantial Completion has been accomplished. When the Work, or designated portion thereof which Walmart agrees to accept separately, is Substantially Complete, Walmart and Contractor shall establish the date of Substantial Completion and prepare, on a form provided or otherwise acceptable to Walmart, a punch-list of Work remaining to be completed which shall fix the time within which Contractor shall finish all such punch-list items.

Failure to include an item on the punch-list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

5.2.7 Subsequent to Substantial Completion of the Work and during Walmart's initial occupancy and use of the Project, Contractor shall schedule and conduct with Walmart a complete review, demonstration and operational shakedown of all equipment and mechanical and electrical systems installed by Contractor on the Project and shall also review the operation and maintenance of such systems with Walmart's maintenance contractors. Subsequent to this review, Contractor, with reasonable promptness and without increase in the Contract Sum, shall make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents and to reflect the actual use and occupancy of the Project by Walmart. If necessary or requested by Walmart, Contractor shall require the Subcontractor responsible for any such equipment or system to participate in the review and/or to perform the adjustments, corrections or balance required by this paragraph.

5.3 FINAL COMPLETION

5.3.1 As used in the Contract Documents, "**Final Completion**" shall mean, and "**Final Payment**" (constituting payment of retainage withheld from Contractor pursuant to paragraph 1.1.13, less amounts which Walmart is permitted to withhold pursuant to paragraph 6.3.1 or other provision of the Contract Documents) shall not be due to Contractor until after:

- (1) the Work, including all Change Orders, has been fully and properly completed in accordance with the requirements hereof, including but not limited to satisfactory operation of all equipment and systems, completion of the final audit and punch-list inspections (including a Work evaluation form if required by Walmart) and performance of all punch-list Work;
- (2) this Contract has been fully performed except for Contractor's responsibility to correct nonconforming work as part of its warranty obligations, and to satisfy other requirements, if any, which necessarily survive completion of all Work and payment of retainage;
- (3) the Final Payment Application, together with all required documentation, has been submitted to and approved by Walmart;
- (4) all maintenance and operations manuals and all warranties and guarantees (and assignments thereof), and all other closeout documents and other documentation required to be submitted to Walmart pursuant to the Contract Documents have been submitted to Walmart, in each case in a form satisfactory to Walmart as determined in Walmart's sole discretion;
- (5) issuance of all required approvals and certificates by any authorities with jurisdiction over the Project (including final and unconditional certificates of occupancy and, if applicable, a final letter of acceptance for the fire protection system from the jurisdictional authority rating and fire prevention bureau and from Walmart's insurance carriers);
- (6) delivery of as-built plans and specifications to Walmart;
- (7) delivery of all safety documentation required by the Contract Documents completed in a manner satisfactory to Walmart in its sole discretion;
- (8) Contractor delivers to Walmart a written consent of its performance and payment bond surety to the reduction of retainage;
- (9) removal of all rubbish, tools, scaffolding and surplus materials from the Project site; and
- (10) correction of all property damage that is the responsibility of Contractor pursuant to the Contract Documents.
- (11) satisfaction of all closeout requirements set forth in Specifications Sections 01740 and 01770

5.3.2 In addition to the items specified in paragraph 5.3.1, the Work will not be considered Finally Complete, and Final Payment shall not be due and owing and shall not be made, unless and until Contractor submits to Walmart the following, along with, and as part of, its final Application for Payment: (1) a "**Subcontractor Final Unconditional Waiver**," in the form attached as Exhibit 5.3.4, signed by each Subcontractor who may be entitled to a lien against Walmart's property; (2) a

“**Contractor Final Unconditional Waiver**” signed by Contractor and in the form attached as Exhibit 5.3.2 ; (3) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Walmart or Walmart’s property might be responsible or encumbered (less amounts withheld by Walmart) have been paid or otherwise satisfied; (4) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to Walmart; (5) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (6) written consent of the Project surety or sureties, if any, to Final Payment; (7) as-built record drawings as defined by paragraph 3.9; (8) maintenance stock; (9) keys; (10) training/in-service on the operation of new systems and equipment; and (11) if required by Walmart, other data establishing payment, the satisfaction of obligations and the absence or release of liens, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Contract, to the extent and in such form as may be designated by Walmart. If any such lien on the Project remains unsatisfied or arises after Final Payment is made to Contractor, Contractor shall be responsible to cause such lien to be removed of record as required by (and subject to the requirements and rights of Walmart as may be set forth in) paragraph 6.2.9 below.

5.3.3 Upon receipt of Contractor’s final Application for Payment and written notice from Contractor that the Work is ready for final inspection and acceptance, Walmart will promptly make such inspection to determine whether the conditions listed in this Contract as precedent to Contractor’s being entitled to Final Payment have been fulfilled, and the Work is Finally Complete as defined herein.

5.3.4 Unless otherwise agreed by Walmart in writing, neither the issuance of any progress payment or certificate for payment nor Final Payment, nor the partial occupancy nor use of a portion of the Work shall constitute acceptance of Work not complying with the requirements of the Contract Documents. Acceptance of Final Payment by Contractor and any Subcontractor shall constitute a waiver of all claims by Contractor and such Subcontractor.

5.4 EXCUSED DELAYS

5.4.1 Contractor shall not be entitled to any increase in the Contract Time as a result of any delay, regardless of its cause or nature, unless and only to the extent of any delays in the critical path of the Work that are attributable to causes beyond the reasonable control of, and could not have been foreseen, avoided or mitigated by reasonable efforts taken by, Contractor or its Subcontractors. Any such delay is referred to herein as an “**Excused Delay**.” Delay caused by strikes, picketing, work-stoppages or similar labor-related action, shall not constitute an Excused Delay except for: (1) “wild-cat” strikes in violation of a collective bargaining agreement to which Contractor and/or one of its Subcontractors is a party; or (2) an industry-wide strike occurring due to the expiration of, and failure to renew or extend, a multi-employer collective bargaining agreement to which Contractor is a party. Adverse weather conditions shall not constitute an Excused Delay, except and only to the extent that the total duration of delay in the critical path of construction caused by adverse weather conditions exceeds the duration of delays due to adverse weather conditions reasonably anticipated throughout the entire period during which the Work is performed.

5.4.2 In the event of an Excused Delay, Contractor shall be obligated to deliver to Walmart a Preliminary Change Request pursuant to the terms of paragraph 4.2.1 with respect to such Excused Delay, and Contractor shall thereafter be entitled to an increase in the Contract Time equal to the number of working days, or portions thereof, that completion of the Work beyond the dates established in this Contract is actually delayed by such Excused Delay. Contractor shall not be entitled to an increase in the Contract Sum as a result of an Excused Delay (or due to any acceleration or other impact to the performance of the Work caused by any Excused Delay or any action directed by Walmart with respect to the time for performance of the Work) except and only in the event of (and provided timely written notice is provided pursuant to the terms of paragraph 4.2.1) a delay in the critical path of the Work caused by an act or omission of Walmart in violation of this Contract. In any such event, Contractor’s sole remedy shall be an increase in the Contract Sum equal to the actual and reasonable increased cost caused by such delay, acceleration or other impact. Contractor’s sole and exclusive rights and remedies in the event of any delays, interferences, acceleration or other impact to the completion of the Work shall be those set forth in this paragraph, and Contractor shall be entitled to no additional compensation and shall have no additional or other rights of any kind or nature arising out of or under this Contract by virtue of any delays, interferences, acceleration or other impact, regardless of their length or nature. The failure of Contractor to deliver to Walmart a Preliminary Change Request as set forth in paragraph 4.2.1 following the occurrence of an Excused Delay within the applicable time frame established by paragraph 4.2.1 shall mean that Contractor has irrevocably waived the right to claim any increase or adjustment in the Contract Sum or Contract Time on account of such delay, and Contractor shall perform all work required by or in connection with any occurrence or condition giving rise to the claim without increase in the Contract Sum, an extension of the Contract Time or other compensation or remedy of any kind.

5.4.3 No delay to the Work will be considered an Excused Delay unless: (1) it actually delays Substantial Completion of the entire Work (delays of only certain trades will not be considered an Excused Delay unless they in turn actually delay the Substantial Completion of the entire Work); and (2) the delay cannot be recovered by reasonable actions to mitigate or avoid the effect of the delay.

ARTICLE 6

COMPENSATION AND PAYMENTS

6.1 CONTRACT SUM

The Contract Sum shall be Contractor's sole compensation for all profit, home office services and supervision, overhead and all other costs or expenses incurred in connection with the performance of the Work on the Project. The Contract Sum will not be increased for any reason, cause or circumstance unless and only to the extent expressly permitted by this Contract.

6.2 SCHEDULE OF VALUES AND PROGRESS PAYMENTS

6.2.1 Within twenty-four (24) hours following execution of this Contract, Contractor shall prepare and submit to Walmart a "**Schedule of Values**," which proportionately allocates the entire Contract Sum among the various portions of the Work. If requested by Walmart, Contractor shall produce such data to substantiate the accuracy of the Schedule of Values as Walmart may require. The Schedule of Values, unless objected to by Walmart, shall be used only as a basis for reviewing Contractor's Applications for Payment.

6.2.2 Contractor's applications for payment shall be made on an electronic form designated by Walmart from time to time (each an "**Application for Payment**"). If Walmart elects, in its sole discretion, and upon notice by Walmart to Contractor, Contractor shall transmit all Applications for Payment via an electronic process as set forth in such notice. Each Application for Payment shall be filled out completely on account of the Contract Sum and Schedule of Values and shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

6.2.3 When applying for payment, as a condition precedent to Contractor's entitlement to payment, Contractor shall submit the original and one (1) copy of its Application for Payment, including the supporting continuation sheets, to Walmart's Contract Administrator, along with all of the following documentation, which shall constitute part of Contractor's Application for Payment:

- (1) the Daily Force and Activity Reports required by paragraph 3.8.2;
- (2) a Monthly Schedule Report, complete with an updated Material Status Report and other documentation, as required by paragraph 3.8.3; and
- (3) an up-to-date Schedule of Submittals required by paragraph 3.8.5.

In addition to the above, if requested by Walmart in connection with any Application(s) for payment, as a condition precedent to Contractor's entitlement to payment, Contractor shall submit the following documents as part of Contractor's Application for Payment:

- (1) a "**Subcontractor Partial Waiver**" in the form attached hereto as Exhibit 6.2.3(1) (provided that, if such form is unenforceable under applicable law, Contractor shall use a subcontractor lien waiver form permitted by applicable law), executed by each Subcontractor;
- (2) a "**Contractor Partial Waiver**" in the form attached hereto as Exhibit 6.2.3(2) (provided that, if such form is unenforceable under applicable law, Contractor shall use a contractor lien waiver form permitted by applicable law), executed by Contractor; and/or
- (3) an updated AIA Document G805-2001, listing all Subcontractors and others then employed, or proposed to be employed, for the Project by or on behalf of Contractor.

6.2.4 In addition, each Application for Payment shall be notarized, if required by Walmart, and supported by such additional data substantiating Contractor's right to payment as Walmart may reasonably require, such as copies of requisitions,

invoices or payment applications from Subcontractors and shall reflect all retainage provided for herein. Walmart shall not be required to process or make payment in response to any Application for Payment until all required supporting documentation is received by Walmart. Notwithstanding anything contained herein to the contrary, however, should Walmart make payment to Contractor without receiving all additional supporting documentation required by paragraph 6.2.3, 6.2.4 or otherwise (which payment Walmart shall have no obligation to make), such payment shall in no way represent a waiver or release of Contractor from its obligations to prepare and/or secure all such supporting documentation (including, without limitation, all required lien waivers) or to otherwise cause the Project to be constructed free of all mechanic's and similar liens and otherwise in accordance with the requirements of this Contract.

6.2.5 Contractor's Applications for Payment shall not request payment of any amount otherwise owed to Contractor for Work performed by a given Subcontractor to the extent that Contractor does not intend to pay such amount to the Subcontractor because of a dispute or other reason.

6.2.6 Subject to other provisions of the Contract Documents, partial payments of the Contract Sum to Contractor shall be in amounts calculated as follows: (1) take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values; (2) add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work during the next sixty (60) days or, if approved in advance and in writing by Walmart, suitably stored at an off-site location; (3) add the applicable portion of Contractor's fee indicated on the Schedule of Values based on the overall percentage of Work completed; (4) subtract the aggregate of previous payments made by Walmart; (5) subtract applicable retainage as provided in paragraph 1.1.13; and (6) subtract amounts, if any, for which Walmart has withheld payment or denied the Application for Payment as provided in this Contract. In addition, each Application for Payment shall request payment on account of changes in the work which have been properly authorized by a Change Order, minus applicable retainage as set forth herein.

6.2.7 Walmart and Contractor hereby acknowledge and agree that the amount of retainage contemplated hereunder constitutes a reasonable amount of the Contract Sum. To the maximum extent permitted by applicable law, Contractor hereby waives its rights, pursuant to statute or otherwise, to require the deposit of the retainage in a separate escrow or other account in a bank or other entity and authorizes and directs Walmart to hold and release the retainage in accordance with the terms of the Contract.

6.2.8 Unless otherwise provided in the Contract Documents or as otherwise required by applicable law, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work within the next sixty (60) days. If approved in writing and in advance by Walmart, payment may similarly be made for materials and equipment suitably stored off-site at a location agreed upon by Walmart in writing. Payment for materials and equipment stored on- or off-site shall be conditioned upon compliance by Contractor with procedures satisfactory to Walmart to establish Walmart's title to such materials and equipment or otherwise protect Walmart's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off-site. Notwithstanding the foregoing, Walmart shall not be required to make payments for materials and equipment stored on site if such equipment and material exceeds ten percent (10%) of the value of Work in place.

6.2.9 Contractor warrants that title to all Work covered by an Application for Payment will pass to Walmart no later than the time of payment. In the event that any lien, claim, security interest or encumbrance is registered or otherwise recorded against title to all or any part of the Work or the premises on which the Work is being performed, Contractor covenants to cause the same to be removed within three (3) days of notice thereof. If Contractor receives information that a lien, claim, security interest or encumbrance may be so registered or recorded, Contractor shall immediately resolve the issue to the sole satisfaction of Walmart. If such lien remains unsatisfied after payments are made, Contractor shall, in addition to the foregoing obligation to resolve the issue to the satisfaction of Walmart and Contractor's indemnity obligations hereunder, promptly refund to Walmart upon request all costs and expenses that Walmart may reasonably incur in connection with its investigation, defense against and/or discharge of such lien, including but not limited to, reasonable attorneys' fees.

6.2.9.1 Neither Walmart's rights nor Contractor's indemnification or other obligations under the Contract Documents shall be impaired or affected in any way by the failure of Walmart to provide Contractor with a copy of a notice to Walmart, notice of lien, mechanic's lien, or other information requested by Contractor. Contractor shall require this language in all contracts with its Subcontractors and all contracts between Subcontractors.

6.2.9.2 If a Subcontractor refuses to furnish lien waivers as required herein, then, without limiting Contractor's indemnity and other obligations hereunder, Walmart may, in its sole and absolute discretion, choose to waive its right to withhold payment on account of such lien following the delivery by Contractor of (1) an indemnity bond in amount, form

and substance satisfactory to Walmart in its sole discretion fully indemnifying Walmart against all claims of such Subcontractor; and (2) all such other information and documentation as Walmart shall require in its sole discretion. Notwithstanding the foregoing, Walmart shall have no obligation to waive its right to require lien waivers from all Subcontractors as a condition precedent to payment, as set forth in paragraph 6.2.3.

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

6.2.10 No payment made by Walmart shall constitute a representation that Walmart has: (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors or other data requested by Walmart to substantiate Contractor's right to payment; or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

6.3 DENIAL OF APPLICATION FOR PAYMENT

6.3.1 Walmart may deny an Application for Payment, in whole or in part, and withhold or refuse to pay the amount requested, to the extent reasonably necessary to compensate (including compensation for Walmart's reasonable attorneys' fees) or protect Walmart, if in Walmart's opinion: the Work has not progressed to the point indicated in Contractor's Application for Payment; the Work is not in accordance with the Contract Documents; or Contractor otherwise is not entitled to payment of the amount requested. Walmart may also deny an Application for Payment, in whole or in part, and therefore withhold or refuse to pay the amount requested, to such extent as may be necessary, in Walmart's opinion, to compensate (including compensation for Walmart's reasonable attorneys' fees) or protect Walmart from loss because of: (1) defective Work not remedied; (2) any third-party lien or claim asserted or threatened; (3) failure of Contractor to make, or to ensure, proper payment to Subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to Walmart or another contractor; (6) reasonable evidence that the Work will not be completed within the Contract Time; (7) failure by Contractor to fully satisfy the requirements of this Contract and/or carry out the Work in accordance with the Contract Documents; or (8) negligence of Contractor or any Subcontractor.

6.3.2 Without limiting the foregoing, additional grounds for denying an Application for Payment, in whole or in part, and withholding or refusing to pay the amount requested, include, but are not limited to, Contractor's failure to provide any and all documentation required to be delivered by it prior to the execution of this Contract as set forth in the Instructions to Bidders issued with respect to the Project.

6.3.3 If Contractor and Walmart cannot agree on the amount due pursuant to an Application for Payment, Walmart shall make payment of undisputed amounts which Walmart is not authorized to withhold. When the reasons for withholding payment pursuant to paragraph 6.3.1 are removed, payment shall be made as part of the next progress payment otherwise due to Contractor.

6.4 PAYMENTS TO SUBCONTRACTORS

6.4.1 Contractor shall promptly pay each Subcontractor not later than fourteen (14) days after receipt of payment from Walmart, or such shorter time as may be required by applicable law, out of the amount paid to Contractor pursuant to Contractor's Application for Payment, the full amount itemized in such Application for Payment as intended for work performed by such Subcontractor. Contractor shall, by appropriate agreement with each Subcontractor, require payments between Subcontractors to be made in the same manner.

6.4.2 Walmart shall have the right, but not the obligation, to issue any and/or all progress payments to Contractor in the form of joint checks payable both to Contractor and its Subcontractors, as appropriate, or through an escrow account, and Contractor shall sign such additional documents and take such action as Walmart shall deem necessary to carry out the intent of this paragraph 6.4.2. In addition, Contractor hereby authorizes and consents to direct communications, at any time and in any fashion, between Walmart and any Subcontractors on the Project. Walmart may furnish to a Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by Walmart on account of portions of the Work performed by such Subcontractor.

6.4.3 Walmart shall not have an obligation to pay or ensure the payment of money to a Subcontractor except as may otherwise be required by law.

6.4.4 Contractor shall indemnify and hold harmless Walmart and any owner of the real property on which the Project is located (if other than Walmart), and their affiliated entities, officers, directors, agents and employees, from and against all damages, losses and expenses, including, without limitation, attorneys' fees paid or incurred in connection with the settlement or defense of any lien, claim, demand or action by a Subcontractor retained by, through or on behalf of Contractor, provided that Contractor shall be relieved of such obligations only to the extent that Walmart has not paid Contractor the amount owed under this Contract, if any, on account of that portion of the Work for which the lien, claim, demand or action is asserted. In the event any such lien should be asserted against or attach to the Project, Contractor shall, within three (3) days after receipt of notice thereof, cause the lien to be removed of record.

6.4.5 In the event any lien should be asserted against or attach to the Project on account of Contractor's failure to pay, or to ensure payment of, a Subcontractor or other person with lien rights against the property, Contractor shall, in addition to its obligations to cause such lien to be removed of record as set forth in paragraph 6.4.4, take such actions as may be requested by Walmart such that Walmart's title insurance company will issue and deliver to Walmart and any lender for the Project, owner's and lender's title policies insuring against such lien, or issue and deliver endorsements to existing policies insuring against such lien to Walmart and any lender and any other person or entity that Walmart may direct.

ARTICLE 7

INSURANCE AND BONDS

7.1 CONTRACTOR'S LIABILITY INSURANCE

Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State in which the Project is located and acceptable to Walmart such insurance as will protect Contractor from the following kinds of claims, which may arise out of or result from Contractor's operations under this Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (1) claims under workers' or workmen's compensation, disability benefits and other similar employee benefits acts which are applicable to the Work to be performed; (2) claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees; (4) claims for damages insured by customary personal injury liability coverage; (5) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and (7) claims involving contractual liability insurance applicable to Contractor's obligations under paragraph 3.16.

7.2 INSURANCE POLICY LIMITS AND COVERAGES

7.2.1 Any self-insured retention or deductible applicable to any of the above-referenced insurance coverages shall not exceed \$25,000 without the prior written consent of Walmart. Contractor shall pay all deductibles or self-insured retentions applicable to the insurance policy or policies that Contractor is required to provide under the Contract Documents. The aggregate limitations of liability under the Commercial General Liability and Umbrella/Excess Liability coverages required above shall apply exclusively to occurrences and claims relating to the instant Project. Prior to commencement of the Work, Contractor shall furnish Walmart a copy of the "Per-Project Aggregate" endorsement acceptable to Walmart.

7.2.2 With respect to the Umbrella/Excess Liability coverage required above, Contractor shall cause each insurance company to provide the insurance on an umbrella/excess basis in excess of and no less broad than the liability coverages required in this Contract, and with coverage that "drops down" for exhausted aggregate limits under liability coverages and contractual liability coverages as required in this Contract and with an endorsement to provide new per occurrence and aggregate limits for each location.

7.3 OTHER TERMS

7.3.1 All insurance shall be procured from carriers maintaining an A.M. Best Rating of "B+VII" or higher and which are acceptable to Walmart. All coverage shall be on an occurrence basis. The coverage on all such policies required from Contractor pursuant to this Contract shall be primary to any valid and collectible insurance carried by Walmart, and Walmart's policies shall be excess, secondary and noncontributing. Contractor shall require all Subcontractors to carry insurance coverage of such types and with such minimum limits as may be necessary or appropriate in light of the Work being performed by each such Subcontractor and as may be required by any applicable laws, statutes, rules or regulations; provided, however, that Subcontractors must, in all cases, provide Workers' Compensation Insurance with statutory limits. Contractor shall maintain its required insurance policies, at its sole cost and expense, in full force and effect until this Contract has been

fully performed and final payment of the Contract Sum is made, except for such coverage required pursuant to the terms of the Contract Documents to be maintained after all of the foregoing items have been completed.

7.3.2 Contractor shall require each insurance company: (1) to provide defense coverage for liability insurance policies as an additional benefit and not within the limits of liability, (2) to issue an endorsement to all policies to provide a waiver of subrogation in favor of Walmart, (3) to issue an endorsement to all policies, except the workers' compensation and employer's liability insurance policies, acceptable to Walmart, to include Walmart and its subsidiaries, affiliates, officers, directors, employees, and agents as "additional insureds." The insurance company or companies shall not exclude from coverage allegations of the negligence, strict liability, or gross negligence, whether sole or otherwise, of the "additional insureds," but coverage may be excluded if there has been a final judicial decision from which there is no further right to appeal of the negligence, strict liability or gross negligence of the "additional insureds." Additionally, the insurance company or companies shall not include any third-party beneficiary exclusion in the policies required herein.

7.3.3 Contractor shall provide to Walmart before the Work is started, and again at least thirty (30) days prior to the expiration of a policy or policies of insurance in effect during the term of this Contract, a certificate or certificates of insurance evidencing all required insurance in the Contract Documents which are acceptable to Walmart, and an additional certificate evidencing continuation of coverages are required to remain in force after Final Payment shall be submitted with Contractor's final Application for Payment. The certificates of insurance to be provided to Walmart hereunder shall (a) evidence each of the requirements set forth in items (1) through (3) set forth above in paragraph 7.3.2, (b) show Wal-Mart Stores, Inc., its subsidiaries and affiliates as a certificate holder and Walmart's address as 2001 S.E. 10th Street, Bentonville, Arkansas 72716, (c) show the amounts of all deductibles and self-insured retentions, (d) have attached executed and signed copies of all required endorsements to each insurance policy, (e) have any and all disclaimers deleted from the certificate to the extent that such disclaimers conflict with the above requirements, and (f) identify the applicable store number and location. Contractor shall retain copies of all certificates of insurance provided by Subcontractors and, if requested by Walmart, shall promptly provide such certificates of insurance to Walmart. Upon request, Contractor shall provide to Walmart a certified copy of any and all insurance policies and any and all insurance policy information for those policies required in this Contract.

7.3.4 Contractor releases Walmart and its subsidiaries, affiliates, officers, directors, employees, and agents from any liability covered by the insurance for which subrogation is waived; the release applies to any liabilities, no matter how caused, not just to insurance proceeds actually received. Contractor shall provide to Walmart at least thirty (30) days' advance written notice of any contemplated cancellation, non-renewal, or change in insurance coverage.

7.3.5 Contractor's failure to procure and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Contractor fails to remedy the breach within seven (7) days after notice from Walmart, Walmart may, in addition to any other remedy available to it, at its option, purchase the insurance, at Contractor's expense, or immediately terminate this Contract. Contractor shall indemnify and defend Walmart Indemnified Parties from and against any Damages or other losses (including but not limited to prosecution of claims for coverage against any insurer) arising from Contractor's failure to procure and/or maintain the insurance.

7.3.6 The foregoing requirements as to types and limits of insurance coverage to be maintained by Contractor and, as applicable, its Subcontractors, and Walmart's approval thereof, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor and its Subcontractors under this Contract.

7.3.7 Contractor shall ensure that Walmart's partial use or occupancy of the Project while the Work is being performed is not prohibited by any policy of insurance required by this Article 7. If requested by Walmart, Contractor shall provide written consent of its insurance company or companies to partial use and occupancy of the Project by Walmart.

7.4 PROPERTY INSURANCE

7.4.1 Unless otherwise required by Walmart, Contractor will purchase and maintain Builder's Risk Insurance with minimum limits in an amount that will cover full construction costs of the property as of the date the Project will be completed, the Contract Sum, any increased costs from Change Orders, profit and overhead in amounts no less than the applicable Walmart Supplied Costs, as defined in and specified on Exhibit 1.1.20. This coverage shall be on an all-risk policy form and shall not exclude or contain a sub-limit of liability for the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses

required as a result of such insured loss. This insurance shall also include coverage for all losses related to business interruption to Walmart in amounts no less than those specified on Exhibit 1.1.20 for Business Interruption, as applicable. This insurance shall cover portions of the Work stored off the Site and portions of the Work in transit. If the builder's risk insurance carried pursuant to this paragraph is subject to any deductible(s), then Contractor shall pay all costs and expenses not covered by such insurance because of such deductible(s).

7.4.2 Walmart and Contractor agree to waive all rights against each other and against Subcontractors with respect to any losses to the extent that such losses are paid by builder's risk property insurance purchased by Contractor pursuant to this Article. Contractor shall require of Subcontractors, by appropriate written agreements, similar waivers each in favor of Walmart. The builder's risk insurance policy specified in this paragraph shall also provide and contain waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until no person or entity other than Walmart has an insurable interest in the property required by this paragraph to be covered, whichever is later.

7.4.3 If requested by Walmart, Contractor shall file with Walmart a copy of each policy that includes insurance coverages required by paragraph 7.4.1. Such policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Walmart.

7.4.4 A loss insured under the Builder's Risk Insurance may, if requested by Walmart, be adjusted by Walmart and made payable to Walmart for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause. Contractor shall pay Subcontractors their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, Contractor shall payments between Subcontractors to be made in a similar manner.

7.5 PERFORMANCE AND PAYMENT BONDS

7.5.1 If required under the Contract Documents, Contractor shall furnish separate performance and payment bonds covering faithful performance of this Contract and payment of obligations arising hereunder, respectively, which bonds shall be issued by a surety authorized to transact business in the State in which the Project is located and acceptable to Walmart. Both bonds shall be in a penal sum equal to one hundred percent (100%) of the Contract Sum, and shall be on the forms attached as Exhibits 7.5.1(1) and 7.5.1(2) hereto. Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney. Unless otherwise required by applicable law, the duration of the surety's responsibilities and liability under the required performance and payment bonds shall be coextensive with the duration of Contractor's responsibilities and liability to Walmart under this Contract and applicable law.

7.5.2 If State law permits the filing or recordation of a payment bond in a manner that prevents mechanic's liens from attaching to the Project (or otherwise limits the exposure of Walmart's property and/or the Project to mechanic's liens and/or similar liens of contractors, subcontractors, laborers and/or materialmen), Contractor shall cause the payment bond to be procured and filed or recorded, as applicable, so as to fully avail the Project, Walmart's property and Walmart of the protections afforded by such State law.

7.5.3 Contractor shall provide a "copy" of the bonds described herein to Walmart before commencing any of the Work.

7.5.4 Contractor shall promptly pay to Walmart all dividends, rebates or return of payments in any form of premiums paid for the bonds. Payment shall be made in the form of a cashier's or certified check.

ARTICLE 8
CLAIMS AND OTHER RIGHTS AND REMEDIES

8.1 RIGHTS AND REMEDIES

8.1.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder (including duties, obligations, rights and remedies set forth in this Article 8) shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or otherwise set forth in the Contract Documents (including, without limitation, duties, obligations, rights and remedies set forth in paragraph 3.15 (regarding indemnification for royalties and patents), 3.16 (regarding general indemnification), and 14.6 (regarding interest) of the Contract).

8.1.2 Failure of Walmart or Contractor at any time, or from time to time, to enforce or require strict observance and performance of any term or condition of this Contract will not constitute a waiver of, or affect or impair such terms or conditions in any way, nor will such failure affect the right of Walmart to avail itself at any time of such remedies as it may have for any breach or breaches of such terms or conditions.

8.2 CLAIMS AND DISPUTES

8.2.1 A “claim” is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms or other relief with respect to the terms of the Contract Documents. The term “claim” also includes other disputes and matters in question between Walmart and Contractor arising out of or relating to this Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

8.2.1.1 Notwithstanding the foregoing definition, the parties expressly acknowledge and agree that the term “claim” as used in this paragraph 8.2 shall not apply to an assertion by the Contractor that the Contractor is entitled to additional compensation or additional time (including without limitation as a result of its discovery of any of the items described in paragraph 3.1.2, a claim of a Reasonably Unforeseen Condition, a claim of Excused Delay, or otherwise). The provisions of this paragraph 8.2 shall not apply to any assertion by Contractor that it is entitled to additional compensation or additional time for any reason whatsoever. In the event that Contractor believes that it is entitled to additional compensation or additional time for any reason whatsoever, Contractor must follow the procedures set forth in paragraph 4.2. Failure by Contractor to follow the procedures set forth in paragraph 4.2 in the event Contractor believes it is entitled to additional compensation or additional time for any reason shall mean that Contractor has waived the right to request such an increase or extension and shall be obligated to perform all work required by or in connection with any occurrence or condition giving rise to the assertion without increase in the Contract Sum, an extension of the Contract Time or other compensation or remedy of any kind.

8.2.2 Any claim by Contractor must be made within seven (7) days after occurrence of the event giving rise to such claim or within seven (7) days after Contractor first recognizes the condition giving rise to the claim, whichever is later. Contractor shall provide Walmart with all particulars of the claim including all supporting documentation within thirty (30) days after the notice of claim is delivered unless Walmart agrees in writing to an extension of time. Failure to submit all particulars of the claim, including all supporting documentation, within the time provided shall absolve Walmart of all obligations therefor. Any additional claim made after the initial claim is submitted to Walmart and which is based upon or arises out of the same event as the initial claim will not be considered and is deemed waived.

8.2.3 Notwithstanding any other provision of this Contract, the failure of Contractor to provide Walmart with written notice of any claim within the applicable time frame established by paragraph 8.2.2 above shall mean that Contractor has waived such. Contractor’s sole and complete remedy with respect to any successful claim (including, but not limited to, claims based on changes to the Work or delay, impact or acceleration) shall be the actual increased cost of labor and material, if any, incurred by Contractor as a result of the occurrence or condition giving rise to the claim.

8.2.4 Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with Walmart including, but not limited to, any disputes or claims by Contractor that Walmart has materially breached or defaulted under this Contract. No Work shall be delayed or postponed pending resolution of any disputes or disagreements. Contractor expressly agrees that Walmart has no adequate remedy at law in the event that Contractor stops Work, and that Walmart may obtain an injunction in a court of competent jurisdiction enforcing this provision requiring Contractor to continue to perform under this Contract pending resolution of any dispute or disagreement.

8.2.5 If either party to this Contract suffers injury or damage to person or property because of an act or omission of the other party, or of any of the other party’s employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time after

the occurrence giving rise to the injury or damage which forms the basis of the claim. The notice shall provide sufficient detail to enable the other party to investigate the claim.

8.3 DISPUTE RESOLUTION

8.3.1 Any claim that is not resolved by negotiation between the parties shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. The parties shall share the mediator's fee and any filing fees equally, and the mediation shall be held in the State in which the project is located. Any claim that is not resolved by mediation shall be decided pursuant to the procedures set forth in this paragraph 8.3.

8.3.2 Any claim that is not resolved by mediation as aforesaid that satisfies either of the following conditions shall be decided by resort to binding arbitration in the State in which the Project is located: (a) the claim involves an amount in dispute in excess of Two Million and No/100 Dollars (\$2,000,000.00) and/or (b) the claim involves three (3) or more parties, each of whom have agreed to resolve disputes by resort to binding arbitration. Notwithstanding the foregoing, if Walmart or Contractor seek to assert a legal defense to a claim asserted against it based on the expiration of the statute of limitations or the statute of repose or upon the theory of laches, then such claim shall be submitted to a court of competent jurisdiction in accordance with the requirements of paragraph 8.3.3 below separate from any arbitration proceeding. Binding arbitration required hereunder shall be subject to the remaining terms of this paragraph 8.3.2.

8.3.2.1 The arbitration shall be conducted on a confidential basis in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, and such arbitration shall be conducted by three (3) arbitrators selected pursuant to American Arbitration Association rules. At least two of the arbitrators shall be attorneys.

8.3.2.2 Either Walmart or Contractor shall be permitted to include in the arbitration proceeding, by consolidation or joinder or otherwise, any parties substantially involved in a common question of fact or law, and Contractor hereby agrees to include in its subcontracts and purchase orders entered into in connection with the Project provisions identical to those contained in this paragraph to allow (and require) such parties to be so joined to such arbitration. The foregoing agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

8.3.2.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

8.3.3 Any claim that does not satisfy the conditions for resolution by resort to binding arbitration as set forth in paragraph 8.3.2 above shall be decided by resort to litigation in any court of competent jurisdiction in the State in which the Project is located, and the following terms shall apply: (1) the parties mutually consent to submit to the jurisdiction of the federal and/or state courts of the State in which the Project is located; (2) the parties shall bring any action or suit concerning the Contract Documents or related matters only in such federal or state courts; and (3) the parties shall not raise, and hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this paragraph.

8.3.4 The parties expressly acknowledge and agree that Contractor's sole and complete remedy with respect to any successful claim made pursuant to this paragraph 8.3 (including, but not limited to, claims based on changes to the Work or delay, impact or acceleration) shall be the actual increased cost of labor and material, if any, incurred by Contractor as a result of the occurrence or condition giving rise to the claim, calculated pursuant to the terms of Exhibit 4.1 (as supplemented by the terms of paragraph 4.1.3.1).

8.3.5 The parties acknowledge that they have read and understand this clause and agree voluntarily to its terms. Contractor shall include in all subcontracts and purchase orders, provisions identical to those contained in this paragraph.

8.4 TERMINATION

8.4.1 Walmart may terminate this Contract without cause upon seven (7) days' written notice to Contractor. In the event Walmart terminates this Contract without cause, Contractor shall be entitled to compensation only for the Work performed by Contractor and accepted by Walmart, pursuant to the provisions of and subject to the limitations set forth in this Contract, up to and including the date of termination, earned pursuant to the terms of this Contract as of the date of termination, all as determined by the stage of completion achieved by Contractor (overall and in each category of the Work, as applicable) as of the date of termination. Walmart agrees that acceptance of such Work shall not be unreasonably withheld. Further, in the event Walmart so terminates this Contract, Walmart agrees to pay for services, materials and supplies ordered by Contractor prior to the date of termination, for use in connection with the Project, and necessary for the reasonable discharge of

Contractor's responsibilities under this Contract, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if Contractor is so terminated, Walmart shall pay Contractor the reasonable value (based on purchase or rental as applicable) of any equipment retained by Walmart and the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the site of the Project incurred as a result of the termination. Walmart will not be responsible, however, to reimburse Contractor for any continuing contractual commitments to Subcontractors or penalties or damages for canceling such contractual commitments, and no compensation shall be allowed to Contractor or its Subcontractors for anticipated profit, unperformed services or intangibles. Any compensation due under this paragraph shall be payable to Contractor thirty (30) days after such termination.

8.4.2 Walmart may terminate this Contract, in whole or in part, "for cause," upon seven (7) days' written notice to Contractor, upon the occurrence of any of the following events (each of which shall constitute a material breach by Contractor): (1) if Contractor shall fail to complete within the time specified in the Contract Documents the whole or any portion of the Work; (2) if, in the opinion of Walmart, Contractor is not making sufficient progress with the Work as to assure completion of all or any portion thereof within the time specified for completion thereof; (3) if, in the opinion of Walmart, Contractor fails to perform the Work in accordance with the Contract Documents; (4) if Contractor shall fail to comply in a full and timely manner with any provision of the Contract Documents; and/or (5) if any other event identified in the Contract Documents as grounds for termination by Walmart occurs. The termination by Walmart for cause pursuant to this paragraph 8.4.2 will not be effective unless Contractor has failed to cure the cited condition within seven (7) days after receipt of Walmart's written notice of intent to terminate. All references in the Contract to any right of Walmart to terminate the Contract shall be deemed to permit Walmart to terminate the Contract completely or partially, in its sole discretion.

8.4.3 In addition to, and without limiting the rights of Walmart set forth in paragraph 8.4.2 above, Walmart may immediately terminate this Contract, in whole or in part, by delivering written notice of termination to Contractor upon the occurrence of any of the following events (each of which shall constitute a material breach by Contractor): (1) if Contractor fails to strictly comply with any of the Compliance Requirements; (2) if Contractor otherwise violates any applicable federal, state or local laws, rules, regulations, statutes, codes, orders or ordinances; or (3) if Contractor shall be unable to pay its debts as they mature, shall be insolvent or shall make any assignment for the benefit of creditors or if any bankruptcy petition is filed by, on behalf of or against Contractor. All references in the Contract to any right of Walmart to terminate the Contract shall be deemed to permit Walmart to terminate the Contract completely or partially, in its sole discretion.

8.4.4 In the event Walmart terminates this Contract pursuant to paragraph 8.4.2 or 8.4.3 above, Contractor shall be liable to Walmart for all costs and damages incurred by Walmart as a result of Contractor's acts, omissions, fault, negligence, errors or breach of contract (including attorneys' fees and court costs, the costs of completing Contractor's performance of the Work as required by the Contract Documents, and the cost of any additional services required of Architect as a result of Contractor's fault or breach). After all such damages have been paid, Contractor shall be entitled to the amount, if any, remaining due to Contractor (after deducting such damages) for any Work performed by Contractor up to and including the date of such termination. If such costs exceed the unpaid balance due to Contractor, Contractor shall be liable to Walmart for the difference. Additionally, in the event of any termination of this Contract by Walmart, Walmart may, at its option and without further notice to Contractor (unless necessarily required pursuant to applicable law) and in addition to any other rights and remedies that may be available under the Contract Documents, at law or in equity:

- (1) Either through its own employees or through any contractor of its choice, complete the portion of the Work terminated or remedy such defect of material or workmanship at Contractor's expense, and, except to the extent otherwise required pursuant to applicable law, Walmart may use or permit any such contractor to use all materials and equipment of Contractor on the site on the date of giving such notice. Contractor shall, within ten (10) days from receipt of an invoice therefor, reimburse Walmart for any and all costs incurred in correcting such defects or completing such portion of the Work that was terminated; and
- (2) Take possession of the Project site and, to the maximum extent permitted by applicable law, all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor.

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

8.4.6 Contractor's sole remedy for any termination of this Contract shall be the compensation allowed in paragraphs 8.4.1 and 8.4.3 above, as applicable. Any termination by Walmart for cause that is later determined to be unjustified and any termination of this Contract by Contractor pursuant to paragraph 8.4.7 below shall be treated as a

termination without cause pursuant to this paragraph. In either such event, Contractor's remedies for such termination shall be limited to those set forth in paragraph 8.4.1 above.

8.4.7 This Contract may be terminated by Contractor only if all of the following conditions are satisfied: (1) Walmart fails to make payment to Contractor, within thirty (30) days after such payment is due, for Work performed by Contractor and accepted by Walmart, pursuant to Article 9; (2) Contractor has delivered to Walmart written notice of such failure and Contractor's commitment to terminate the Contract if payment is not made within thirty (30) days after the date of such notice; and (3) Walmart fails to make such payment to Contractor within the thirty (30) day period following receipt of such written notice from Contractor. Contractor's sole and exclusive rights in the event of such termination shall be those set forth in paragraph 8.4.1, and Contractor shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature arising out of or under this Contract by virtue of such termination or suspension.

8.4.8 Payment by Walmart to Contractor of any monies pursuant to this Article 8 shall not constitute a waiver of any remedies which Walmart may otherwise have against Contractor for any failure of Contractor to perform in accordance with this Contract.

8.5 SUSPENSION OF THE WORK

8.5.1 Walmart, with or without cause, and in its sole and absolute discretion, may order Contractor at any time, to stop or suspend the Work upon written notice, signed by Walmart or by an agent specifically so empowered by Walmart in writing, given to Contractor. The right of Walmart to stop or suspend the Work shall not give rise to any duty on the part of Walmart to exercise this right for the benefit of Contractor or any other person or entity.

8.5.2 To the extent Walmart suspends the Work without cause, an adjustment shall be made for increases in the cost of performance of this Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption ordered by Walmart which lasts more than thirty (30) consecutive days. However, and without limiting the foregoing, no adjustment shall be made to the extent: (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract.

8.6 UNCOVERING OF WORK

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

8.6.2 If any other portion of the Work has been covered which Walmart or Architect has not specifically requested to observe prior to being covered, Walmart or Architect may request to see such Work and it shall be uncovered by Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Walmart. If such Work is found not in accordance with the Contract Documents, Contractor shall pay such cost, unless it is found that this condition was caused by Walmart or a Separate Contractor, in which event Walmart shall be responsible for the payment of such cost.

8.7 CORRECTION OF WORK

8.7.1 In addition to, and without limiting, Contractor's obligations under paragraphs 3.4.1 through 3.4.4 above, Contractor shall promptly repair, replace or correct, as appropriate, all Work discovered within one (1) year after the date of Substantial Completion of the Work by Architect, Walmart's Consultants or Walmart to be defective or failing to conform to the Contract Documents, whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. Contractor shall bear all costs of repairing, replacing or correcting such Work, including compensation for Architect's additional services made necessary thereby.

8.7.2 Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents that are neither corrected by Contractor nor accepted by Walmart.

8.7.3 If Contractor fails to repair, replace or correct defective or nonconforming Work to Walmart's satisfaction within ten (10) days after receiving notice thereof, Walmart may, without limiting any other rights available to Walmart, do so or contract with a third party to do so (or a combination of both), and Contractor shall promptly reimburse Walmart for all fees,

costs and expenses incurred by Walmart as a result thereof. If Contractor does not proceed with such correction, repair or replacement of defective or nonconforming Work within the aforesaid time, Walmart may, without limiting any other rights available to Walmart, remove it and store any salvageable materials or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Walmart may upon ten (10) additional days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including compensation for Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Walmart. Nothing stated herein shall limit rights or remedies otherwise available to Walmart.

8.7.4 Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Walmart or Separate Contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

8.7.5 During any correction period, Contractor shall return for replacement of both Contractor-furnished and/or Walmart-furnished defective or nonconforming parts under warranty by the manufacturer. Contractor shall record unit model and serial numbers and forward to Walmart.

8.7.5 All work performed by Contractor or any Subcontractor to correct, repair or replace any defective or nonconforming Work shall be expressly subject to all of the terms and conditions of the Contract Documents bearing in any way on the performance of Work, including, without limitation, the Compliance Requirements, paragraph 3.16 and Article 7.

8.7.6 Nothing contained in this paragraph 8.7 shall be construed to establish a period of limitation with respect to other obligations which Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in paragraph 8.7.1 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

8.8 ACCEPTANCE OF NONCONFORMING WORK

If Walmart prefers at any time to accept Work which is not in accordance with the requirements of the Contract Documents, Walmart may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced by an amount acceptable to Walmart. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 ENTIRE AGREEMENT; GOVERNING LAW; VENUE

This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, bids and agreements either written or oral. Without limiting Walmart's authority to require compliance with Change Orders, this Contract may be amended or modified only by a written instrument executed by Walmart and Contractor. The Contract Documents shall be construed, governed, and enforced under the laws of the State in which the Project is located, without regard to the internal law of such State regarding conflicts of law.

9.2 SUCCESSORS AND ASSIGNS

9.2.1 Walmart and Contractor respectively bind themselves, their partners, successors and assigns to the other party hereto and to the partners, successors and assigns to such other party in respect to the covenants, agreements and obligations contained herein. Neither party to this Contract shall assign this Contract, in whole or in part, without the written consent of the other party, except that Walmart may conditionally assign this Contract to any lender to Walmart or the Project (*i.e.*, contingent on Walmart's default under the applicable loan documents) and may assign this Contract to any parent, subsidiary or affiliate of Walmart or any successor in interest to Walmart by virtue of a merger or acquisition involving Walmart. Contractor hereby agrees to execute any and all documents which may be reasonably requested by any construction or permanent lender, including the assignment of this Contract, in whole or in part, and Contractor shall be bound thereby. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under this Contract.

9.2.2 Notwithstanding any of the other provisions of this Contract, Walmart may sell its interest in the land on which the Project is located, and subject to Contractor's approval of the purchaser, which said approval shall not be unreasonably withheld, Contractor will accept the purchaser as Walmart under this Contract and will release the original Walmart from any and all liability to Contractor under this Contract provided that Walmart demonstrates to the reasonable satisfaction of Contractor that such purchaser's net worth and credit-worthiness are comparable to or better than Walmart's.

9.3 WRITTEN NOTICE

All notices and other communications to Contractor required or permitted under this Contract shall be in writing delivered by hand, commercial courier, or certified mail, return receipt requested, to Contractor's Superintendent at the physical addresses included in paragraph 1.1.7. All notices and other communications to Walmart required or permitted under this Contract shall be in writing delivered by hand, commercial courier, or certified mail, return receipt requested, to Walmart's Construction Manager and Walmart Contract Administrator at the physical addresses included in paragraph 1.1.4, with a copy to:

Wal-Mart Stores, Inc.
2001 S.E. 10th St.
Bentonville, Arkansas 72716-0550
Attn: Legal Department

Notice shall be deemed given upon delivery by hand, upon delivery to commercial courier for next business day delivery properly addressed and prepaid, or upon placing the notice in the U.S. mail properly addressed and with sufficient postage for certified mail, return receipt requested.

9.4 TESTS AND INSPECTIONS

9.4.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Walmart, or with the appropriate public authority, and Walmart shall be responsible for the fees owed to the testing laboratory or entity in connection with such tests, inspections and approvals. However, notwithstanding the foregoing, in the event any additional testing, inspections or approvals are required or are reasonably deemed appropriate by Walmart as a result of any defective or non-conforming Work performed by or through Contractor, then Contractor shall bear all costs in any way associated with such additional testing, inspections or approvals, including, without limitation, all fees owed to the testing laboratory or entity. Contractor shall give Architect and Walmart timely notice of when and where tests and inspections are to be made so Architect, Walmart's Consultants and/or Walmart may observe such procedures.

9.4.2 If Architect, Walmart's Consultants, Walmart or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under paragraph 9.4.1, Walmart will instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Walmart, and Contractor shall give timely notice to Walmart of when and where tests and inspections are to be made so Architect, Walmart's Consultants and/or Walmart may observe such procedures. Walmart shall bear such costs except if such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, in which case Contractor shall bear all costs made necessary by such failure.

9.4.3 Inspection or testing relating to the Project but not required by the terms of paragraph 9.4.1 or 9.4.2 that is otherwise performed by or through Walmart or any of Walmart's Consultants shall be solely for Walmart's benefit, and, except to the extent required by law, (1) Walmart assumes no obligation or duty to Contractor to perform such inspections or tests or to share with or disclose to Contractor the results of any such inspections or tests, (2) Walmart shall have no liability to Contractor whatsoever in connection with (x) the results of such inspections or tests; (y) Walmart's decision to perform or not to perform such inspections or tests, or (z) Walmart's decision to disclose or not to disclose the results of any such inspections or tests; and (3) should Walmart choose, in its sole and absolute discretion, to share the results of such inspections or tests with Contractor, or should Contractor otherwise learn the results of such inspections or tests, Contractor shall have no right to rely upon such results, and any reliance by Contractor on such results shall be at Contractor's sole and absolute risk and Contractor's obligations hereunder shall in no way be relieved, reduced or diminished.

9.5 INTEREST

Monies not paid when due as required by this Contract shall not bear interest until thirty (30) days after the date when due. Thereafter, said monies shall accrue interest at one (1) point above the prime rate as published by The Wall Street Journal as of the date when such amounts first accrue interest hereunder.

9.6 TREATMENT OF PROPRIETARY INFORMATION

9.6.1 As used herein, the term “**Proprietary Information**” shall mean any and all information which Contractor acquires from Walmart and its affiliates, subsidiaries, employees, suppliers and customers (collectively, the “**Walmart Protected Parties**”), or arises out of the Work on the Project and concerns the present and future plans of Walmart and any Walmart Protected Parties, or pertains to the operations of Walmart’s or a Walmart Protected Party’s business, or otherwise pertains to the Project in any way.

9.6.2 Contractor shall hold confidential and shall not use or disclose, and will cause its employees, officers, directors, managers, partners, affiliates and other representatives (collectively, the “**Representatives**”) to hold confidential and not use or disclose, all Proprietary Information, and shall only disclose the Proprietary Information to such of its Representatives with a “need to know” such information. At any time upon the request of Walmart, and in any event upon the earlier of the completion of the Work or the termination of this Contract, Contractor shall return to Walmart all such Proprietary Information, including, without limitation, all written and electronic copies thereof, all storage devices on which any Proprietary Information is stored, and all other materials containing or incorporating any Proprietary Information, including any and all excerpts, parts, portions, transcriptions, copies, facsimiles and reproductions of any Proprietary Information.

9.6.3 In connection with performing the Work, Contractor may have access to material non-public information about Walmart or its affiliates, subsidiaries, suppliers, customers or employees. Contractor acknowledges and agrees that federal and state securities laws prohibit Contractor or its Representatives from trading in Walmart’s securities while in the possession of material non-public information regarding Walmart. Contractor further acknowledges and agrees that information obtained while performing the Work may constitute material non-public information. Contractor irrevocably agrees that neither it nor any of its officers or directors shall trade any Walmart securities during any period in which Contractor possesses material non-public information.

9.7 EARLY OCCUPANCY

9.7.1 Walmart shall have the right to occupy or use ahead of schedule all or any substantially completed or partially completed portion of the Work when such occupancy and use are in its best interest, notwithstanding the time of completion for all of the Work.

9.7.2 After Walmart has taken occupancy of all or any substantially completed portion of the Work under construction, Contractor shall not disrupt Walmart’s use and occupancy thereof to make corrections in or to complete the Work but shall, at Walmart’s discretion, make such corrections and perform such completion at such times and in such fashion so as to avoid interference with, or interruption of, Walmart’s use and occupancy of such portion of the Work.

9.7.3 Walmart may require the use and operation of any completed heating, ventilating or air-conditioning equipment at the time that it occupies or uses any substantially completed portion of the Work under construction. In such event, Walmart may require Contractor to operate such equipment and will pay Contractor the cost of such operation required for Walmart’s use and occupancy, but Contractor shall be responsible for such equipment and for its careful and proper operation. At any time, Walmart may itself assume the care and maintenance of any portion of the Project which it is occupying and using and/or the operation of any such equipment, but in each case, Contractor shall not be relieved of its responsibility for the full completion of the Work and the protection of its tools, materials and equipment, except that the warranty period for any such equipment for which Walmart assumes care and maintenance shall be deemed to commence at the time Walmart assumes such care and maintenance.

9.8 NON-EXCLUSIVE AND INDEPENDENT CONTRACTOR

9.8.1 Contractor shall perform the Work for Walmart on a non-exclusive basis. Walmart retains the right to contract with others in the business of providing construction work as Walmart determines from time to time and may assign work to others at the Project as it determines necessary. Walmart makes no projections about the quantity of work which may be assigned to Contractor, and Contractor may not rely in any way on any past or perceived projections or expectations of

work. Walmart shall not have any responsibility or liability in connection with any act or expenditure, including expenditures for equipment, materials, supplies, hiring, or capital, by Contractor because of any actual or perceived projections or expectations as to work.

9.8.2 Walmart and Contractor enter into this Contract and the Contract Documents as independent contractors and at arms' length. Neither Walmart nor Contractor has the right, and shall not seek, to exercise any control over the other party, its employees, or its agents. Contractor shall control the methodology for performing the Work to meet Walmart's specifications. Each party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, benefits, and other terms and conditions in regard to its own employees. Neither Contractor nor any of its employees or agents may be considered Walmart's agents or employees for any purpose and have no authority to act or purport to act on Walmart's behalf. Neither Contractor nor its employees or agents are entitled to receive any benefits, including, but not limited to, salary, vacation pay, sick leave, retirement benefits, social security, workers' compensation, health, disability, unemployment, and stock options, that Walmart may provide to its employees.

9.9 GENERAL

9.9.1 Capitalized terms used but not defined in this Contract but which are defined in the Contract Documents shall have the meanings designated in those other Contract Documents.

9.9.2 The Contract Documents, including all Exhibits to this Contract, constitute the full understanding of the parties, a complete allocation of risks between them, and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings, and understandings, whether written or oral, regarding the subject matter of the Contract Documents, are superseded by, and merged into, the Contract Documents. Each of the Exhibits to this Contract is expressly incorporated herein by reference and is as fully a part of this Contract as if completely set out herein.

9.9.3 Nothing in the Contract Documents is intended, or shall be deemed, to confer any rights upon any person who is not a party to this Contract, except for the Walmart Indemnified Parties as defined herein.

9.9.4 Nothing in the Contract Documents creates any relationship of trust or fiduciary relationship between Walmart and Contractor. The Contract Documents do not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

9.9.5 This Contract may be executed in one or more counterparts, all of which shall be deemed one and the same agreement. Any counterpart delivered by, or on behalf of, either party hereto by fax transmission or other electronic delivery of an image file reflecting the execution thereof: (1) may be relied on by the other party as if the document were a manually signed original, and (2) will be binding on the signing party.

9.9.6 Article, section and paragraph headings are for convenience only and may not be construed as part of the Contract Documents or as a limitation on the scope of the particular sections.

9.9.7 If either party fails to give notice or enforce any right under the Contract Documents, the failure shall not constitute a waiver of the right, unless the parties reduce the waiver to writing and the waiving party signs the writing. If a party waives its right in writing, the waiver shall not constitute a waiver of any other right or of a subsequent violation of the same right. The rights and remedies of Walmart hereunder are cumulative to, and not exclusive of, any rights or remedies which Walmart would otherwise have in law or at equity.

9.9.8 If any term, covenant or condition of the Contract Documents or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Contract Documents, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of the Contract Documents shall be valid and enforced to the fullest extent permitted by law.

9.9.9 Walmart has no obligation to provide any minimum amount of business to Contractor, and no person has authority to make any representations or promises of business to Contractor on Walmart's behalf or about Walmart's intentions or expectations of renewing or extending this Contract or providing any present or future business to Contractor. If Contractor

makes any expenditures, investments, or commitments in reliance on any present or future business from Walmart under the Contract Documents or otherwise, Contractor does so at Contractor's own risk and without any obligation whatsoever from Walmart.

9.9.10 Contractor shall not refer to Walmart or any company affiliated with Walmart in any advertising or published communication without the prior written approval of Walmart, which approval may be withheld in Walmart's sole discretion. Contractor shall not use, or allow to be used, Walmart's name, logo, trademarks, service marks, patents, copyrights or trade dress without the prior written approval of Walmart, which approval may be withheld in Walmart's sole discretion.

9.9.11 Contractor represents that it currently follows, and shall for so long as it is performing any Work under the Contract Documents continue to follow, industry best practices as a means to prevent any compromise of its information systems, computer networks, or data files ("**Systems**") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Walmart. In the event Contractor's systems are breached or compromised in any way, Contractor shall give Walmart immediate notice of the nature and scope of the breach or compromise. Contractor shall apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and anti-virus software; maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and operating security mechanisms in the manner in which they were intended sufficient to ensure Walmart will not be impacted nor its operations disrupted; and permitting only authorized users access to Walmart Systems. Contractor shall use up-to-date anti-virus tools to remove known viruses and malware from any email message or data transmitted to Walmart; prevent the transmission of attacks on Walmart via the network connections with Walmart and prevent unauthorized access to Walmart Systems via Contractor's networks and access codes. In accordance with all applicable law and regulations, Contractor shall safeguard confidential, protected, individually identifiable personal information (health, financial, identity) which is received, transmitted, managed, processed, etc.

9.9.12 In the event of any action or proceeding brought by either party against the other under the Contract Documents, the prevailing party will be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.

9.9.13 The default or breach by Contractor of (or the occurrence of an event which, with the passage of time or the giving of notice or either of them would constitute a default or breach by Contractor of) any term, condition, or obligation set forth in another contract or agreement with Walmart, or any subsidiary, division or affiliate of Walmart (collectively, the "**Other Contracts**"), which term, condition or obligation is similar to any of the terms, conditions or obligations constitution a part of the Compliance Requirements, or that otherwise relate to environmental, immigration or employee-safety issues (such provisions are collectively referred to herein as the "**Cross Default Provisions**") shall constitute and be deemed a breach of such similar Cross Default Provision(s) of this Contract. The default or breach by Contractor of (or the occurrence of an event which, with the passage of time or the giving of notice or either of them would constitute a default or breach by Contractor of) any Cross Default Provision set forth in this Contract shall constitute and be deemed a breach of such similar Cross Default Provision(s) set forth in the Other Contracts. In the event of any breach of any Cross Default Provision, Walmart shall have the right to pursue such remedies with respect thereto as are provided for herein or in the Other Contracts, as applicable, or at law or in equity, concurrently, cumulatively or successively against Contractor.

9.9.14 Notwithstanding any provision in this Contract to the contrary, Walmart does not assume responsibility for the control of the construction personnel of Contractor or any Subcontractors, for assuring compliance by Contractor or any Subcontractors with the obligations set forth herein, or for implementation and enforcement of such obligations, all of which shall remain solely and exclusively the responsibility of Contractor, and Walmart shall not be deemed to be a joint employer of any employees of Contractor or any Subcontractors by virtue of any of the terms and conditions hereof.

9.9.15 Contractor and Walmart waive all claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes (1) damages incurred by Walmart for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and (2) damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Contract pursuant to the provisions of the Contract Documents. Notwithstanding the foregoing, this paragraph shall not be deemed to preclude or limit Contractor's responsibility or liability for: (a) liquidated damages, when applicable, under the Contract Documents; (b) property damage, bodily or personal injury, illness or death; or (c) any Damages resulting from a violation by Contractor or any Subcontractor of any of the Compliance Requirements.

9.9.16 Contractor hereby warrants and represents that it is a duly licensed contractor under the laws of the State in which the Project is located.

9.9.17 The terms of this Contract shall be construed and applied without regard to any presumption or rule of law requiring construction against the drafting party.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Contract as of the Effective Date first noted above.

WALMART:

Wal-Mart Stores, Inc.

CONTRACTOR:

[Click here to enter text.](#)

By: _____

Name:

Title:

By: _____

Name:

Title: Authorized Contract Signer

EXHIBIT 1.1.8

CONTRACT DOCUMENTS

- (1) The “**Specifications**” are:

Bid Documents, to include, but not limited to, plans and specifications, issued at out to bid within Walmart’s electronic bidding tool or as modified by Addenda.

- (2) The “**Drawings**” are:

Bid Documents, to include, but not limited to, plans and specifications, issued at out to bid within Walmart’s electronic bidding tool or as modified by Addenda.

- (3) The “**Addenda**” are:

[Click here to enter text.](#)

- (4) The following additional documentation:

EXHIBIT 1.1.9

SPECIAL CONDITIONS

(Issued at Out to Bid or as Modified by Addendum)

- (1) At Substantial Completion of the project the General Contractor and Construction Manager will review additional or deleted power drops within each power drop zone, defined by power plans, to verify any additional charges or credits that apply due to changes. For each additional power drop within a zone the following schedule A or B will apply accordingly as a charge. For each deleted power drop within a zone the following A or B schedule will apply accordingly as a credit.

(A) Schedule A for adding or deleting a power drop within a zone that does not require a home run back to the panel:

20 AMP-\$770 per drop

30 AMP-\$770 per drop

50 AMP-\$880 per drop

(B) Schedule B for adding or deleting a power drop within a zone that does require a home run back to the panel:

20 AMP-\$1,870 per drop

30 AMP-\$1,870 per drop

50 AMP-\$2,200 per drop

EXHIBIT 1.1.14

ALTERNATES AND UNIT PRICES

Alternate #	Accepted/Rejected?	Description	Amount (\$)
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

EXHIBIT 1.1.16

MILESTONE COMPLETION DATES

Contractor shall perform the work such that the following portions of the work are completed within the corresponding time limits set forth herein:

Click here to enter text.

EXHIBIT 1.1.20

INSURANCE COVERAGES AND LIMITS

The coverages and limits of liability contained in Contractor's insurance policies required pursuant to paragraph 7.1 shall of the Contract shall be not less than those specified below.

- (1) Commercial General Liability: combined single limit for bodily or personal injury and property damage of not less than \$1,000,000 each occurrence, \$2,000,000 annual aggregate. Such insurance shall include the following coverages: (1) premises/operations; (2) independent contractors; (3) products/completed operations (for a period of not less than five (5) years following completion of Contractor's operations at the Project site); (4) contractual liability, insuring all liability assumed by Contractor pursuant to this Contract; (5) personal injury liability; (6) personal and advertising injury; (7) medial payments, bodily injury and property damage; (6) explosion, collapse and underground hazards.
- (2) Worker's Compensation: statutory limits or, if no statutory limits exist, with minimum limits of \$1,000,000 per occurrence;
- (3) Employer's Liability: \$1,000,000 per occurrence;
- (4) Automobile Liability (owned, non-owned and hired): minimum combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and annual aggregate;
- (5) Umbrella/Excess Liability: minimum limits of \$2,000,000 each occurrence/aggregate. Such certificate of insurance shall explicitly denote the excess nature of the umbrella/excess liability policy in respect of underlying Commercial General Liability, Automobile Liability, and Employer's Liability and shall state policy follows form; and
- (6) Coverage for Walmart's contingent liability for claims which may arise from operations under this Contract, which coverage can be afforded by adding Walmart as additional insured on general liability insurance coverage.

WALMART SUPPLIED COST

"Walmart Supplied Cost" means the amounts specified below for the applicable Store Type and Prototype. New Store only

- (7) Walmart Supplied Costs based on appropriate Prototype and Store Type:
 - a) Walmart Neighborhood Market
 - All Prototypes = \$1,435,000
 - Walmart Supercenter
 - Prototype 70 = \$1,615,000
 - Prototype 122 = \$3,000,000
 - Prototype 151 = \$3,550,000
 - Prototype 182 = \$4,000,000
 - Sam's Club
 - All Prototypes = \$3,300,000
 - b) In addition to the amount of Walmart Supplied Costs identified in 7(a) above, include the following applicable amount if a Fuel Station is included in scope:
 - Walmart Neighborhood Market
 - Fuel Station All Prototypes = \$295,000
 - Walmart Supercenter
 - Fuel Station Prototype 1440 = \$420,000
 - Sam's Club
 - Fuel Station Prototype 192 = \$340,000

WALMART SUPPLIED COST

Remodel only

- (7) Walmart Supplied Costs based on appropriate Prototype and Store Type:
- a) Walmart Neighborhood Market
 - Bid/Contract Amount up to \$500,000 = \$750,000
 - Bid/Contract Amount \$500,000 to \$750,000 = \$1,000,000
 - Bid/Contract Amount \$750,000 to \$1,000,000 = \$1,500,000
 - Bid/Contract Amount \$1,000,000 and up = \$1,650,000
 - Walmart Supercenter
 - Bid/Contract Amount up to \$300,000 = \$750,000
 - Bid/Contract Amount \$300,000 to \$500,000 = \$1,000,000
 - Bid/Contract Amount \$500,000 to \$1,000,000 = \$1,500,000
 - Bid/Contract Amount \$1,000,000 to \$2,000,000 = \$2,000,000
 - Bid/Contract Amount \$2,000,000 and up = \$4,400,000
 - Sam's Club
 - LT/LRM Scope: Any Bid/Contract Amount = \$900,000
 - RM2 Scope: Bid/Contract Amount up to \$1,500,000 = \$1,300,000
 - RM2 Scope: Bid/Contract Amount \$1,500,000 and up = \$1,500,000

BUSINESS INTERRUPTION

New Store & RM

- (8) Business Interruption Coverage based on appropriate Prototype and Store Type:
- a) Walmart Neighborhood Market
 - Prototypes 30 through 41 = \$350,000
 - Prototypes 43 through 50 = \$400,000
 - Walmart Supercenter
 - Prototypes 70 through 122 = \$800,000
 - Prototypes 128 through 153 = \$1,400,000
 - Prototypes 176 through 182 = \$1,600,000
 - Prototypes 195 and up = \$1,800,000
 - Sam's Club
 - All Prototypes = \$1,600,000

EXHIBIT 3.6 – COMPLIANCE

3.6.1 COMPLIANCE GENERALLY

3.6.1.1 PROJECT SPECIFIC TERMS

3.6.1.1.1 **Compliance Requirements.** Compliance with all laws, including Safety Laws, Environmental Laws, Stormwater Laws and Worker Verification Laws as well as requirements found within the Contract Documents, this Compliance Exhibit and the corresponding or referenced Compliance Specifications that pertain to Safety Compliance, Environmental Compliance, Stormwater Compliance and Worker Verification Compliance.

3.6.1.1.2 **Compliance Laws.** All Compliance related laws, regulations and requirements to include Safety Laws, Environmental Laws, Stormwater Laws and Worker Verification Laws.

(a) **Safety Laws.** All applicable Federal, state and local laws, ordinances, rules, regulations and lawful orders relating to the safety or health of persons or property including without limitation, compliance with local safety laws, local fire and life safety code, building codes, safety or environmental laws governing exposure to toxic or hazardous substances, transportation safety laws concerning the safety of shipments arising out of the course of work, the latest Occupational Safety and Health Act of 1970, 20 U.S.C. Section 651 et seq. (“**OSHA**”) safety standards and rules and regulations promulgated there-under, and all state approved and local safety and health statutes, rules and regulations.

(b) **Environmental Laws.** All laws, statutes, regulations and judicial interpretations thereof of the United States, of any state in which the Project Site is located, and of any other government or quasi-government authority having jurisdiction, that relate to the prevention, abatement and elimination of pollution and/or protection of the environment, including but not limited to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976 (“**RCRA**”), 42 U.S.C. § 6901 et seq., the Clean Water Act (“**CWA**”), 33 U.S.C. § 1251 et seq., the Clean Air Act (“**CAA**”), 42 U.S.C. § 7401 et seq., the Safe Drinking Water Act (“**SDWA**”), 42 U.S.C. § 300f et seq., the Endangered Species Act (“**ESA**”), 16 U.S.C. § 1531 et seq., the Toxic Substances Control Act (“**TSCA**”), 15 U.S.C. § 2601 et seq., and the Emergency Planning & Community Right to Know Act (“**EPCRA**”) together with any state statutes or local ordinances or other requirements serving any similar or related purposes. This includes, but is not be limited to, all laws, regulations, permits or other requirements relating to Stormwater, wetlands protection and asbestos abatement or notification, and hazardous materials/hazardous waste management.

(c) **Stormwater Laws.** All Environmental Laws, and other laws, regulations, permits or other requirements relating to Stormwater. This includes the National Pollutant Discharge Elimination System (“**NPDES**” or “Stormwater Permit”) Federal Stormwater general permit system or analogous state Stormwater general permit system required under Stormwater Laws for discharges associated with construction activities on Project Sites greater than an acre in size.

(d) **Worker Verification Laws.** All Federal, state, and local laws, statutes, rules, codes, ordinances, orders and regulations governing the employment of its workers, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules and regulations thereto.

3.6.1.1.3 **Specifications.** Specifications to be provided by Walmart which contain information, terms and conditions regarding Compliance.

3.6.1.1.4 **Walmart Associates.** Employees of Walmart, its subsidiaries, or affiliates, including Sam’s Clubs.

3.6.1.1.5 **Contractors and Workers.**

(a) **Contractor and Subcontractor.** All references to Contractor and Subcontractor shall have the same meaning as those terms are defined in the Contract between Contractor and Walmart, which are

adopted and incorporated into this Compliance Exhibit and/or referenced Specifications to be provided by Walmart; the term Subcontractor shall apply to subcontractors of any tier and for any duration.

- (1) Contractor Workers. Workers of any tier and for any duration of Work on the Project, who are employees of the Contractor.
 - (2) Subcontractor Workers. Workers of any tier and for any duration of Work on the Project, who are employees of a Subcontractor.
 - (3) Workers. Includes all Contractor Workers and Subcontractor Workers of any tier and performing work for any duration.
- (b) Walmart Contractors. Contractors performing work under separate contracts directly with Walmart. This includes any subcontractors hired by Walmart Contractors.
- (1) Walmart Contractor Workers. Individuals of any tier and for any duration of Work on the Project who are employees of Walmart Contractors.
- 3.6.1.1.6 **Hazardous Materials**. Those materials, substances, wastes, pollutants or contaminants which are hazardous, toxic or radioactive and shall include but not be limited to those substances defined as “hazardous substances”, “hazardous materials”, “hazardous wastes”, or other similar designations in the CERCLA, RCRA, Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other Federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision.
- 3.6.1.1.7 **Hazardous Waste**. As defined by U.S. Environmental Protection Agency (EPA) in 40 CFR 261.3, and as defined by specific state and local jurisdictions. Materials shall be considered hazardous wastes as appropriate according to applicable regulations regardless of whether the material was supplied by Walmart.
- 3.6.1.1.8 **Universal Waste**: As defined by the U.S. EPA in 40 CFR 273 and as defined by specific state and local jurisdictions.
- 3.6.1.1.9 **Administrative Violation**: Violations of any Compliance Laws, Compliance Requirements or the Contract Documents. Such violations may be included in Inspection Reports, Notices of Violation, citations, Stop Work Orders, Requests for Production, Warning Orders, Administrative Orders, letters or other written or oral communication. It shall not be necessary for the operation of this paragraph that such violation determinations be reviewed by any court or administrative tribunal.
- 3.6.1.1.10 **Superintendent**. Individual(s) designated by the principal of the Contractor meeting the requirements set forth in Sec. 3.6.1.5.2.
- 3.6.1.1.11 **Competent Person**.
- (a) Competent Person – General. One who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees and who has authorization to take prompt corrective measures to eliminate them
 - (b) Qualified Person Electrical – Must meet both NFPA 70 E and OSHA Definition.
 - (1) Qualified Person (electrical) OSHA Definition. One who has received training in and has demonstrated skills and knowledge in the construction and operation of electric equipment and installations and the hazards involved.
 - (2) Qualified Person (electrical) NFPA 70E. Refer to the most current version of NFPA 70E.
- 3.6.1.1.12 **Compliance Oversight Manager (COM)**. The COM is a designated individual with construction-related and Compliance experience, meets the requirements set forth below in Sec. 3.6.1.5.4, and who is not serving as the Superintendent on a Project Site.
- 3.6.1.1.13 **Stormwater Compliance Certificate**. Evidence of completion of Walmart provided Stormwater training, or alternate training accepted by Walmart Stormwater Compliance Team.
- 3.6.1.1.14 **Compliance Plan**. Comprehensive plan, which includes, without limitation, Contractor’s processes and procedures through which Contractor will ensure said compliance and conformance with Compliance Requirements.

- (a) Stormwater Pollution Prevention Plan (SWPPP). A document or series of documents defining practices and procedures designed to eliminate or minimize the discharge of soils, debris and other pollutants in runoff exiting the project.
 - (b) Safety Plan. A description of Contractor program designed to ensure Compliance with Safety Laws and safety related Compliance Requirements
 - (c) Hazardous Waste Management Plan. The Walmart provided Hazardous Waste management plan identifying regulatory requirements for the generation, management, storage, and disposal of hazardous waste.
- 3.6.1.1.15 **Compliance Incident**. Any matter or issue occurring on or in connection with the Project or Project Site which falls into the following categories:
- (a) Environmental Incident. Any release of a Hazardous Material or Waste that equals or exceeds five (5) gallons or that equals or exceeds its federal or state reportable quantity.
 - (b) Worker Verification Incident. Any Administrative Violation or Regulatory Contact by the Department of Homeland Security (“DHS”) or any other governmental agency or authority related to immigration or worker verification issues of Contractor, its agents, employees, and Subcontractors.
 - (c) Safety Incident. Death or serious injuries requiring either medical attention or when an injured worker is admitted into a hospital or medical care facility for observation or treatment. Also included is the occurrence of any situation in which there is imminent danger to an individual present on or in connection with the Project, and/or any significant property damage.
 - (d) Regulatory Contact. All contacts regarding the Project Site construction operations by any type of regulatory authority, excluding routine building inspections (such as routine building inspectors and Fire Marshalls), unless a compliance exception is identified, including without limitation, NOVs (Notice of Violation), Warnings, Inspection Reports, Notices of Non-compliance, or other similar regulatory correspondences, Audits, Investigations or Raids.
 - (e) Sediment Release. Any discharge of soil materials outside the limits of disturbance for the project, such as sediment laden runoff, track out, or other discharges, excluding intentional transport of soil off site by, and inside, equipment or truck.
- 3.6.1.1.16 **Worker Verification Auditor (“WV Auditor”)**. An independent third party immigration attorney or consultant, selected by Contractor from Walmart’s “Preferred Worker Verification Auditor List” to conduct the audits required pursuant to this Compliance Exhibit and its corresponding or referenced Specifications.
- 3.6.1.1.17 **Worker Verification Certification Forms (WV Forms)**. Forms certifying compliance or audit results pursuant to this Compliance Exhibit and its corresponding or referenced Specifications.
- 3.6.1.1.18 **Qualified Verifier**. Any employee or third party individual/entity responsible for reviewing Verification Documents for Contractor and who meets the requirements set forth in this Compliance Exhibit and its corresponding or referenced Specifications.
- 3.6.1.1.19 **Verification Documents**. Form I-9 and Supporting Documents.
- (a) Form I-9. Original or legible copy of Form I-9 Employment Eligibility Form.
 - (b) Supporting Documents. Original or legible copy of documents provided by Workers to their employers as proof of identity and eligibility for completion of the Form I-9.
- 3.6.1.1.20 **Facilities Occupied by Walmart**. Generally means a facility in which Walmart Associates are performing work and could potentially be exposed to the hazards involved with construction. This would include Store Planning Associates during Early Fixture Set and normal operations during Expansion or Remodel activities. Oversight visits by CMs, store planning or other Walmart Associates with proper PPE and escort is not included.

3.6.1.2 WARRANTIES AND REPRESENTATIONS

- 3.6.1.2.1 General. Contractor understands that Walmart has selected Contractor, in part, because of its representations of experience in, familiarity with, and understanding of Compliance Laws applicable to

construction. Contractor does hereby warrant and represent to Walmart that it is fully aware of, or will be aware of prior to Work beginning, all applicable Compliance Laws relative to the project. Contractor warrants and represents that it will, at all times during the performance of this Contract, strictly comply with all Compliance Laws as well as additional requirements set forth in this Contract and associated Specifications, relative and applicable to the activities to be performed by Contractor under the terms of this Contract.

3.6.1.2.2 Proof of Performance. Walmart reserves the right to demand proof of performance with respect to the representations and warranties provided by the Contractor under the Contract Documents.

3.6.1.3 COMPLIANCE WITH LAW

3.6.1.3.1 General. Contractor shall be responsible for and shall monitor, document and ensure strict compliance with all applicable Compliance Laws by all Contractor Workers and Subcontractors on the Project Site.

3.6.1.3.2 Construction Practices. Contractor shall be solely responsible for and have control over adequacy of stability and safety of all operations, of all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract Documents or otherwise required by good construction practice or by any applicable law rule regulation or code.

3.6.1.3.3 Applicable Laws. If any requirement contained in a Federal, state or local law, regulation, ordinance, permit or other regulatory requirement applicable to the Site is more stringent than any similar requirement contained in this Compliance Exhibit, that requirement shall govern.

3.6.1.3.4 Responsibility. Notwithstanding the provisions of this Compliance Exhibit, Walmart, through the establishment of Compliance Requirements, does not assume responsibility for the control of Workers of the Contractor or its Subcontractors, or for implementation and enforcement of Compliance Requirements, all of which shall remain solely and exclusively the responsibility of the Contractor, and such procedures shall not be construed to limit the Contractor's means and methods of the execution of the Work. The Contractor warrants that it is fully aware of the importance of such Compliance Requirements, and they shall not be grounds for delays or impacts to the Contractor or its Subcontractors in the execution of the Work.

3.6.1.3.5 Failure to Comply. Failure to comply with any provision related to this Exhibit or violation of Compliance Laws shall constitute a breach of this Contract. Walmart's remedies for Contractor's breach are set forth below in Sec. 3.6.1.12.

3.6.1.4 LICENSES, PERMITS AND CERTIFICATIONS ("PERMITS")

3.6.1.4.1 Applications for licenses, permits, approvals and certificates. Unless otherwise clearly and expressly provided in the Contract Documents, Contractor shall diligently obtain, maintain, comply with, and pay for (solely to the extent Contractor may so obtain), and shall be responsible for the completion and submittal of all necessary applications relating to: all required licenses, permits, approvals and certificates, impact documents and temporary easements (hereafter "Permits") relating to, necessitated by and necessary or appropriate for:

- (a) The Work or the product of said Work, the performance and completion of the Work, the overall development of the Project and all other activities and obligations under the Contract Documents (whether performed by Contractor or by any Subcontractor); and
- (b) The proper operation or use by Walmart after the completion of the Work, including all machinery, equipment and fixtures to be installed by Contractor or any Subcontractor in connection with the performance of the Work, in each case with said submittals to, and obtaining from, the proper authorities responsible for issuing said Permits for the Project, including without limitation the building permit and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

- 3.6.1.4.2 Coordination. Contractor shall coordinate with Walmart and any applicable Contractor with respect to obtaining all such Permits.
- 3.6.1.4.3 Fees. Contractor shall be responsible for advancing payment of all fees and issuance of all letters of credit and/or bonds associated with all Permits (and applications therefore), including, without limitation, impact fees, building permit fees, special utility extension fees, meter installation fees, entrance permit fees, special development fees, impact document fees, and temporary easement fees. The Contractor shall provide Walmart with proper verification of the actual cost thereof, and following receipt and approval by Walmart, the Contractor will be reimbursed by Walmart for the actual cost of the advances, without markup. Neither the Contract Sum nor any other fee or charge will apply to these items.
- 3.6.1.4.4 Delays. In the event that any delay is incurred in obtaining any Permit beyond the date estimated on the Permit List, Contractor shall notify Walmart, in writing, of the reason(s) for said delay.
- 3.6.1.4.5 Designation. Notwithstanding any provision to the contrary herein, Contractor shall have the right to designate other persons or entities to obtain any Permit, provided, however, that any such designation shall not relieve Contractor of any liability as a result of any failure to obtain any such Permit.
- 3.6.1.4.6 Permit Availability. Contractor shall ensure that the applicable Permits are readily available at the Site, or at a location properly designated pursuant to the applicable Permit or Compliance Requirements, for review as appropriate.
- 3.6.1.4.7 General Contractor Permit, Registration, Notification (GCPRN) Report. Contractor receives the GCPRN report in the bid documents prior to submission of the bid. The report identifies those permits, registrations, notifications, inspections and/or installer certifications (PRNs) to meet environmental regulatory requirements. The list of PRNs is not intended to be comprehensive, but identifies those PRNs that were identified during the design review process. Contractor shall ensure the PRNs are either forwarded to the Construction Testing Lab (CTL) Project Manager for upload or shall upload directly to the Walmart Workspace.
- 3.6.1.5 RESPONSIBLE PEOPLE AND GENERAL DUTIES
- 3.6.1.5.1 General: Contractor shall enforce strict discipline and good order among Workers and all other persons performing portions of the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them or who are not properly verified as legally able to work within the United States.
- 3.6.1.5.2 Project Superintendents Requirements. The Contractor shall designate the required number of Project Superintendents as identified in the Contract. Proposed Project Superintendents shall:
- (a) Hold a valid Walmart Stormwater Certificate;
 - (b) Have a level of knowledge and understanding of Compliance Laws, requirements and procedures;
 - (c) Successfully complete any Federal, state or local training program mandated by the applicable permit or Compliance Laws;
 - (d) Be responsible for overseeing activities and work at the Site;
 - (e) Possess the skills to adequately identify and implement Compliance Requirements, including sediment and erosion control practices; and
 - (f) Have authority to direct Subcontractors, Walmart Contractors and Workers to undertake actions to comply with the Permits and Compliance Requirements.
- 3.6.1.5.3. Project Superintendents Responsibilities. No Work shall be performed under this Contract unless at least one Superintendent is present on the Site. The Superintendent shall be responsible for all Compliance related inspections, reporting, meetings, and training.
- (a) Stormwater: If an NPDES Stormwater Permit is required for the Project, the Superintendent shall provide oversight, and management, of the implementation, and maintenance of the SWPPP.

- (b) Safety: Superintendent shall be responsible for maintaining general safety, the Safety Program, and protection against accidents, exposure to toxic or hazardous substances generated out of the course of the Work, and property damage.
- 3.6.1.5.4 Compliance Oversight Manager (COM) Requirements. The proposed COM shall:
- (a) Hold a valid Walmart Stormwater Compliance Certificate;
 - (b) Have a level of knowledge and understanding of Compliance Laws, including Stormwater Laws, requirements and procedures.
 - (c) Successfully complete any Federal, State or local training program mandated by the applicable permit or Compliance Laws;
 - (d) Be able to adequately identify and implement Compliance Requirements including storm water sediment and erosion control practices;
 - (e) Have the authority and ability to effectively instruct Subcontractors, Walmart Contractors, and Workers in the implementation of such practices; and
 - (f) Have the authority to stop work on the Site, and direct the Superintendent and other Subcontractors, Walmart Contractors and Workers in the execution of Compliance Requirements, including the ability to remove Workers for failure to comply.
- 3.6.1.5.5 Compliance Oversight Manager (COM) Responsibilities. The COM is the individual on the Project Site with overall responsibility for Compliance. This includes oversight, auditing, training and documentation responsibilities. Responsibilities of the COM include ensuring all “Compliance” training, plans, processes and procedures required in the Contract, its Exhibits, this Compliance Exhibit and all referenced Specifications and/or Forms, or project construction documents, are accomplished and maintained.
- 3.6.1.5.6 Competent or Qualified Person. Contractor shall ensure that Competent or Qualified persons, whichever is applicable, are available per the requirements of Safety Laws for all job descriptions requiring such. For each construction discipline where OSHA or NFPA 70E requires a Competent or Qualified Person, the Contractor shall evaluate candidates for competency and select a candidate that meets those requirements.
- 3.6.1.5.7 Qualified Verifier. Contractor shall ensure a Qualified Verifier reviews Verification Documents on behalf of the Contractor, and shall execute the appropriate WV Forms required in Sec. 3.6.5 of this Compliance Exhibit and its corresponding or referenced Specifications. Subcontractor shall ensure that a Qualified Verifier reviews Verification Documents on behalf of the Subcontractor(s), as evidenced by each Subcontractor’s execution of the appropriate WV Forms required in this WV Exhibit and its corresponding or referenced Specifications.
- (a) Qualified Employee Verifier. Employee of Contractor or Subcontractor who is trained, experienced, and possesses the requisite skill and knowledge to conduct a reasonable compliance review of the Verification Documents.
 - (b) Qualified Third Party Verifier. Any person who is trained, experienced, and possesses the requisite skill and knowledge to conduct a reasonable compliance review of the Verification Documents. May include, without limitation, an immigration compliance attorney or law firm, a human resources compliance firm, or a similar professional services firm engaged in providing administrative or consulting services related to immigration compliance. Walmart reserves the discretion and right at all times, notwithstanding any prior ratification, to disapprove of the selected Qualified Verifier.
- 3.6.1.5.8 Walmart Contractors. Walmart Contractors shall be responsible for relating problems and anticipated issues which may impede the progress of the Work and shall cooperate with Contractor. Walmart Contractors performing Work shall abide by the compliance policies of Contractor and shall not interfere with Contractor’s ability to meet Compliance Requirements.

3.6.1.6 PRECONSTRUCTION/MEETINGS

- 3.6.1.6.1 Preconstruction Meeting (“Precon Meeting”). Prior to initiation of ground-disturbing activities, Contractor/Superintendent shall conduct and document a Precon Meeting at the Site to discuss Compliance issues including topics identified in the Specifications. The Precon Meeting requires, but is not limited to:
- (a) Notice. The Contractor shall give reasonable notice of such Precon Meetings to Walmart and all appropriate governmental agencies having jurisdiction over the Site/Work, and offer them the opportunity to attend. Contractor shall document such invitation(s).
 - (b) Safety. Superintendents shall ensure that all Safety Law required programs and documentation are available, discussed and documented as part of the Precon Meeting. This includes, but is not limited to, sharing Safety Plan requirements and Lockout/Tagout programs and procedures.
 - (c) Waste Management: Contractor shall discuss the general, Hazardous, Universal, and recyclable waste management requirements. Contractor shall explain the site specific requirements and responsibilities.
 - (d) Stormwater: If a NPDES permit is required for this Project, Precon Meeting requirements under Specification Sec. 02370 must be complied with to discuss the permit, the SWPP and Stormwater related concerns for the Project. Initial earth-disturbing Subcontractors must attend this meeting.
 - (e) Worker Verification: Superintendent shall ensure that information and training regarding access controls and WV Forms is described and made available.
- 3.6.1.6.2 Orientation Meetings. The Contractor shall conduct an Orientation meeting for all Workers prior to initiation of their activities at the Project Site if they were unable to attend the Precon Meeting. Content should align with Precon Meeting requirements.
- 3.6.1.6.3 Weekly Meetings. The Contractor shall hold weekly meetings with all Subcontractors working on the Project Site and any persons involved in construction activities. The weekly meetings shall address Compliance issues as identified in the Specifications.
- (a) Safety. Have at least one safety meeting per week which addresses safety information pertinent to current or future work. Every Worker shall attend the meetings and document attendance with a sign-in sheet retained as part of the Safety Plan.
- 3.6.1.7 COMPLIANCE INCIDENT OR AGENCY SITE VISIT REPORTING AND PROCEDURES
- 3.6.1.7.1 Immediate Notice. In addition to any required notice to Regulatory Agencies, actual notice (voice communication, not email or voicemail) to Walmart shall be made within one (1) hour to the appropriate Construction Manager when any of the following occurs:
- (a) Spills of Chemical or Petroleum Products (or other potentially hazardous materials or waste) that equal or exceed the reportable quantity;
 - (b) Safety Incident as defined in Sec 3.6.1.1.15(c);
 - (c) Discovery of Unforeseen Conditions that pose risk requiring a Stop Work in the area conditions exist; and
 - (d) Worker Verification Incident as defined in Sec. 3.6.1.1.15(b) of Definitions.
- 3.6.1.7.2 Electronic Notice. Notice to Walmart shall be made by completing an Incident Report via the electronic reporting system provided by Walmart on the same date as the incident occurred. Electronic Notice must be provided for:
- (a) All items above requiring immediate notice;
 - (b) Regulatory Contacts/visits;
 - (c) Spills of any Hazardous Material or Waste greater than 5 gallons that do not otherwise meet reportable quantity thresholds; and
 - (d) Release or discharge of sediment outside of the Project’s limits of disturbance, excluding the intentional, secure transport of soil inside equipment, or truck, to an off-site, permitted facility.

- 3.6.1.7.3 Additional Procedures for Regulatory Visits. In the event of a Regulatory Contact involving a visit to the Project Site, the Contractor shall ensure and cause its Subcontractors and Workers:
- (a) Comply, with requirements set forth in this Compliance Exhibit and the Specifications;
 - (b) Respond to and fully cooperate in all respects with the regulatory agent or any audit, inquiry, inspection or investigation that may be conducted by any governmental Agency or authority related to Compliance; and
 - (c) Accompany the Agency representative during the Site visit, and note all areas of concern or instances of non-compliance noted by the inspector, and if possible, photograph or video-tape these areas.
- 3.6.1.8 DOCUMENT/PERMIT AVAILABILITY AND RETENTION
- 3.6.1.8.1 Documents. Contractor shall properly maintain at all times during the term of this Contract all records to include, without limitation:
- (a) Permitting documentation. Sec. 3.6.1.4.4 of this Compliance Exhibit and these Specifications;
 - (b) Compliance Plans with all required updates, must be available in the job trailer;
 - a. SWPP Plans on NPDES Permitted Project Sites (Sec. 3.6.1.1.14(a));
 - b. Hazardous Waste Management Plan (Sec. 3.6.1.1.14(c)); and
 - c. Safety Plan (Sec. 3.6.1.1.14(b)).
 - (c) All documentation received as part of Regulatory Contacts;
 - (d) Documents required by any governmental agency or Compliance Laws;
 - (e) All documentation required by and relating to Worker Verification Laws and Contractor's Worker Verification Program.
- 3.6.1.8.2 Document Retention. The Contractor agrees that it will retain required documentation and make readily accessible all records required by the applicable Permits or Compliance Requirements applicable to the Project.
- (a) Documents will be retained and available for a minimum of **five (5) years** after date of contract completion or termination of the Stormwater NPDES permit, whichever is later, or for such longer time as may be required by said Permit or applicable requirement.
- 3.6.1.8.3 Manifest Retention. Contractor shall retain all documentation relating to the generation, transportation, and disposal of Hazardous Waste, to include Hazardous Waste or Universal Waste manifests for a period of not less than 3 years from the date the waste is offered for transport.
- 3.6.1.8.4 Document Production. The Contractor shall, upon written request of Walmart, provide copies of any or all such records at Contractor's sole expense within seven (7) days. For documents required by and relating to Worker Verification Laws and Contractor's Worker Verification program, or where time may be of the essence, documents shall be produced immediately upon request.
- 3.6.1.9 TRAINING
- 3.6.1.9.1 Compliance Conference. During the term of this Contract, owners and principles of the Contractor(s) shall attend the Compliance Conference conducted by Walmart during each year in which it is held.
- 3.6.1.9.2 Contractor Training. Contractor has a duty to ensure Workers are properly trained in the execution of this Contract in all job specific Compliance Requirements. Such training must include, but not be limited to:
- (a) The use of chemicals, supplies and equipment applicable to the Work;
 - (b) The Hazardous Waste Management Plan and the appropriate handling of Hazardous Materials.
 - (c) All appropriate safety and storm water related training as required by job type;
 - (d) Stormwater Compliance Certification;
- 3.6.1.9.3 Retention of Training Documents. Contractor shall document and retain records of training provided to Workers and Subcontractors, including the name, date, and subject of each training session.

3.6.1.10 SITE INSPECTION/AUDIT

3.6.1.10.1 Contractor Site Inspection/Audit. Contractor shall accomplish all required self-audits within the time allotted. Specifically, these include those inspections/audits referenced in the Specifications, as well as all safety related inspections and audits as required under Safety Laws.

3.6.1.10.2 Walmart Site Inspection/Compliance Audit. Walmart may in its sole discretion, retain an independent consultant (the "Audit Consultant") or utilize Walmart Associates to conduct inspections/audits of the Site or of Contractor required documentation or conduct surveys or interviews to determine Contractor compliance with Compliance Requirements. Walmart shall not be required to disclose or otherwise provide the findings to Contractor, and may, in its sole discretion, elect to voluntarily disclose or provide such findings or recommendations to any Federal, state or local agency. Contractor hereby waives, and releases Walmart and Audit Consultant from any and all claims, liabilities, damages, causes of action, penalties or fines, arising from or relating in any way to the audit.

3.6.1.10.3 Contractor Cooperation. Contractor shall fully cooperate and shall require Subcontractors and Workers to fully cooperate, with Walmart or any 3rd party auditors during such inspections and audits.

3.6.1.10.4 Worker Verification. There are unique audit requirements for Worker Verification compliance. See Sec. 3.6.5 of this Compliance Exhibit and its corresponding or referenced Specifications.

3.6.1.11 **MODIFICATION** In the event of any change in the Compliance Laws which would require modifications of or amendments to the provisions of this Exhibit, as determined in Walmart's good faith judgment, Contractor hereby covenants and agrees to negotiate in good faith with Walmart and to accept such modifications and amendments as Walmart deems, in its good faith judgment, necessary as a result of such change.

3.6.1.12 **OWNER REMEDIES AND DAMAGES** In addition to all Walmart Remedies and Damages provided for in the Contract Documents, with regard to failure to meet Compliance Requirements, the following remedies and damages are also available:

3.6.1.12.1 Work Stoppage. In the event of a breach of Compliance Requirements, or the reasonable belief, in the sole discretion of Walmart, that such a breach may have occurred, Walmart may verbally or in writing require Contractor to stop Work until Walmart has determined that relevant breach or violation has been remediated, unsubstantiated or corrected.

3.6.1.12.2 Corrective Action. Contractor shall promptly correct any deficiency and remedy damage and loss to property caused in whole or in part by Contractor, or by anyone for whose acts they may be liable and for which Contractor is responsible. The foregoing obligations of Contractor are in addition to Contractor's indemnification obligations under the Contract.

3.6.1.12.3 Liability for Delay. Any delay resulting from failure to comply or violation of said Compliance Requirements may result in application of any and all remedies listed in this Exhibit or in the Contract.

3.6.1.12.4 Walmart Corrective Action. In the event Walmart discovers Contractor has failed to comply with Compliance Requirements, Walmart may enter upon the Site to abate any actual or imminent Compliance related violation. Contractor shall, upon Walmart's request, reimburse Walmart for any costs incurred in taking such corrective action within 10 days of receipt of written notice and demand by Walmart.

3.6.1.12.5 Qualification for Bidding. Contractor's performance of any and all requirements under the Contract, its Exhibits, this Compliance Exhibit and any referenced Specifications will be monitored and reported to the Walmart Realty Construction Department for consideration as a component of bid qualification for future projects; non-performance and/or the accumulation of administrative or other violations by Contractor may result in the reduction or cessation of opportunities to bid on projects with Walmart.

3.6.2 ENVIRONMENTAL COMPLIANCE

Contractor is responsible for compliance with all Environmental Laws, including compliance with all regulations regarding use, generation, storage, handling, discharge, disposal and transport of Universal and Hazardous Waste.

3.6.2.1 COMPLIANCE WITH DOT LAWS AND REQUIREMENTS Compliance with Federal, state, and local transportation Safety Laws governing the safety of any shipments, including both Hazardous Material and Hazardous Waste arising out of the course of the Work is required. This includes but is not limited to classification, proper shipping name, packaging, marking and labeling, documentation including shipping papers and manifests, placarding and any other special consideration required.

3.6.2.2 LICENSES, PERMITS, AND CERTIFICATIONS. See Sec. 3.6.1.4.

3.6.2.2.1 Hazardous Waste Generator Permit. Contractor, as generator of Hazardous Waste, must obtain an EPA and/or state RCRA identification numbers, if the identification number is required in accordance with state or Federal regulations. Contractor shall not indicate Walmart as the generator of waste or utilize a Walmart EPA or state RCRA identification number.

3.6.2.2.2 Uniform Hazardous Waste Manifest. Contractor shall be the generator of waste listed on the Uniform Hazardous Waste Manifest when disposing of Hazardous Waste or Universal Waste. Contractor shall not indicate Walmart as the generator of waste on the manifest.

3.6.2.3 SITE INSPECTION / AUDITS See Sec. 3.6.1.10.

3.6.2.3.1 Weekly Hazardous Waste Inspection. In conformance with the specifications, Contractor is required to perform a Weekly Hazardous Waste Inspection for each week project is in an active status.

(a) The individual responsible for submission of the Weekly Hazardous Waste Inspection must be Stormwater Compliance Certified.

3.6.2.4 UNIVERSAL WASTE MANAGEMENT Contractor shall have primary responsibility as the generator of all Universal Waste at the Site, including identification and management, regardless of who supplied the materials.

3.6.2.4.1 Contractor shall, upon notification of successful bid award, contact **Waste Management, Inc.** (www.wmlamptracker.com/walmartconstruction) to set up a *Lamptracker* account and register the specific Project Site to manage and recycle/dispose of all Universal and e-scrap (electronic equipment) waste generated on the Site.

3.6.2.4.2 Contractor is responsible for all costs associated with disposal of universal waste.

3.6.2.5 HAZARDOUS MATERIALS AND HAZARDOUS WASTE The Contractor shall properly manage all Hazardous Materials and Wastes present on the Site, regardless of who supplied the materials or generated the waste, and comply with all applicable Compliance Requirements.

3.6.2.5.1 Material Selection and Use. All chemicals and other products utilized in the performance of the Work must be used for its intended purpose and compliant with applicable Federal, state and local requirements, including compliance with all Environmental Laws and Safety Laws. Contractor hereby covenants and agrees that the application of all chemicals and other products utilized in the performance of the Work must be performed by a licensed applicator if so required under any Compliance Laws.

3.6.2.5.2 Walmart Prohibition. Walmart, in its sole discretion, may prohibit certain chemicals or substances from being utilized on Site that would otherwise be approved by Federal, state or local laws and regulation. Such determination will be provided in writing to Contractor.

3.6.2.5.3 Use and Storage of Hazardous Materials. Contractor shall properly safeguard and store any Hazardous Materials present on Site so as to protect against the possibility of fire, spill, injury, fumes

- or other damage. Contractor shall be solely responsible for all damage, cost or expense caused by the use or storage of Hazardous Materials at the Project site.
- 3.6.2.5.4 Hazardous Waste Management. Contractor shall have primary responsibility as the generator of all Hazardous Waste at the Site and shall manage all Hazardous Waste generated on the Site. Contractor shall identify all Hazardous Wastes produced and properly handle and dispose of said Hazardous Waste in accordance with all applicable Compliance Laws. Contractor is responsible for all costs associated with disposal of hazardous waste.
- 3.6.2.5.5 Mandatory Hazardous Waste Vendor. **Waste Management, Inc.** has been designated as the mandatory vendor for the management and disposal of Hazardous Waste on all of Walmart's Sites.
- 3.6.2.5.6 Removal of ALL Materials and Wastes. No construction chemicals, Hazardous Materials or Universal/Hazardous Waste shall remain at the Site upon project completion including those generated or utilized by Subcontractors or supplied by Walmart, but shall be appropriately and lawfully reused, recycled, or disposed of. Walmart will require Contractor to remove any such items discovered after Project completion at Contractor's expense.
- 3.6.2.5.7 Stop Work. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Material or Hazardous Waste encountered on the Site by Contractor, Contractor shall, upon recognizing the condition, immediately Stop Work in the affected area and report the condition per the requirements in Sec. 3.6.1.7. The Contract Time and the Contract Sum may be adjusted appropriately as provided in Sec 3.6.1.12.
- 3.6.2.6 **HAZARDOUS WASTE MANAGEMENT PLAN** Walmart shall provide a Project Site specific Hazardous Waste Management Plan (HWMP). Contractor may amend the provided HWMP as appropriate for the Site conditions or to align the HWMP with existing Contractor procedures for management of Hazardous Materials and Wastes. Contractor shall manage the implementation of the HWMP and ensure compliance with all applicable Compliance Laws relating to the handling and disposal of Hazardous Materials and Wastes.
- 3.6.2.7 **CONDITIONS OF SITE and UNFORSEEN CONDITIONS** See Sec. 1.3.4 of the Contract.
- 3.6.2.8 **ENVIRONMENTAL REMEDIATION ON PROJECT SITE** All Hazardous Waste generated as a result of Project Site remediation must be handled and disposed of in compliance with the Remediation plan and all applicable Compliance Laws.
- 3.6.3 **STORMWATER COMPLIANCE** **Contractor shall comply with the SWPPP and all applicable Stormwater Laws (or related Environmental Laws) for all activities on or related to the Project Site.**
- 3.6.3.1 **PRECONSTRUCTION/MEETINGS.** See Sec. 3.6.1.6.
- 3.6.3.1.1 SWPPP Changes. If changes to any storm water erosion or sediment control measures contained in the SWPPP or other documents required by the applicable Permit are deemed necessary by Walmart, the Contractor, or regulatory agency having jurisdiction over the Site, no construction activities, grading or vegetative clearing activities will take place on those portions of the Site that may be affected by such changes until the proposed changes are made and implemented to the extent possible at that stage of construction. Any such changes shall be immediately reflected in the SWPPP and other appropriate records for the Site. Such changes shall be communicated to all appropriate personnel on the Project Site.

3.6.3.2 SITE INSPECTION. See Sec 3.6.1.10.

3.6.3.2.1 GC Inspection.

(a) Site Inspections. See Project SWPPP.

3.6.3.2.2 Owner Inspection.

(a) Owner may also initiate periodic inspections accomplished by Walmart Construction Manager or Walmart Associates. See Project SWPPP.

3.6.3.3 PERMITTING AND PERMITTING TERMINATION/ FILING OF NOTICE OF INTENT; TRANSFER OF PERMIT; FILING NOTICE OF TERMINATION (*Applicable to NPDES Permitted Projects Only*)

3.6.3.3.1 NPDES Permitting. If the Stormwater Permit or other Stormwater requirements require the Contractor to file for coverage under the applicable Stormwater Permit through submittal of a Notice of Intent (“NOI”), Notice of Coverage (“NOC”), or other application to be covered by such Stormwater Permit as a separate permittee or co-permittee, the Contractor agrees that it will file such application for coverage. If the Stormwater Permit or other applicable Stormwater requirements allow or require such permit coverage to be transferred from Walmart, as Walmart, to the Contractor, the Contractor agrees that it will accept such transfer and execute any documents necessary to affect the transfer of the permit coverage from Walmart.

3.6.3.3.2 Ground Disturbing Activities. The Contractor will not initiate, or allow or direct its Subcontractors to initiate, ground-disturbing activities at the Site until all required stormwater authorizations have been issued by the local, state and/or Federal authorities, or until coverage has been obtained pursuant to any applicable Stormwater Permit or Stormwater requirements. The Contractor shall obtain, transfer, and terminate Stormwater Permit coverage as required by the applicable Stormwater Permit.

3.6.3.3.3 Stormwater Permit Termination. Stormwater Permit holder shall terminate the Stormwater Permit in accordance with Specifications.

3.6.3.3.4 Best Management Practices (“BMP”) Certification. Prior to initiation of ground-disturbing activities, except for activities associated with the installation of BMPs, the SWPPP Engineer and the Superintendent shall inspect the Site to determine whether the BMPs required by the SWPPP have been installed correctly and in the correct locations. The Inspection and Certification of the BMPs must be completed prior to the Stormwater Precon Meeting. The SWPPP Engineer and the Superintendent shall certify in the form set forth at Appendix E to the Wal-Mart SWPPP Specifications (“Civil Engineer and Project Superintendent Certification of Site Best Management Practices”) that the BMPs required by the SWPPP have been implemented correctly prior to the commencement of ground-disturbing activity, and shall deliver such certification to Walmart on or before the date of the Precon Meeting.

3.6.3.4 BORROW PITS, SPOIL PITS, EQUIPMENT AND STORAGE AREAS In the event that Work requires the development and/or use of borrow, waste or spoils material (including non-earthen material, such as block, steel, etc.), equipment or waste storage sites, the Contractor agrees that it will, prior to the development and/or use of such sites, obtain any permits or approvals necessary for the legal use of such sites or confirm that any operators of such sites have properly obtained all required permits, and will also comply with all laws, regulations, permit conditions or other Compliance Requirements applicable to such sites.

3.6.4 **SAFETY COMPLIANCE** Contractor will comply with all applicable Safety Laws. Contractor shall be responsible for the safety of all persons on the Site including, without limitation, Workers, Walmart Contractors, Walmart Associates, customers, vendors, , and any other

third person who might be present on the Site. Contractor shall supervise all Work by any party to confirm compliance with Safety Laws and the applicable Safety Plan.

- (a) Controlling Contractor. Between the established and agreed upon construction start and possession dates, Contractor is the “Controlling Contractor” per 29 CFR 1926. Walmart shall ensure Walmart Associates, Walmart Contractors, vendors, and suppliers comply with the Contractor Safety Plan, including Personal Protective Equipment, to the extent the Contractor controls access to the Site, communicates the requirements, and enforces the Safety Plan.
- (b) Walmart Safety Compliance Requirements. Walmart may go above and beyond Safety Laws in the associated Compliance Specification. Contractor shall comply with these measures.
- (c) General Industry Standards. When Work is taking place in a Facility Occupied by Walmart, additional Safety Laws (OSHA) applicable to General Industry in addition to Construction may apply to Work in order to protect Walmart Associates and customers, suppliers, and vendors from construction hazards. Additional obligations are set forth in Specifications to address these risks.

3.6.4.1 INCIDENT OR SITE VISIT REPORTING AND PROCEDURES See Sec. 3.6.1.7.

3.6.4.1.1 Emergencies. In an emergency affecting safety of persons or property, Contractor shall take such actions as necessary to prevent or minimize threatened damage, injury or loss.

3.6.4.2 SAFETY PLAN Contractor shall be responsible for initiating, maintaining and supervising a Safety program as set forth in a Site specific Safety Plan necessary to comply with Safety Laws and Compliance Requirements.

3.6.4.2.1 Safety Plan Requirements. The Safety Plan must:

- (a) Be in writing and on the Site;
- (b) Include all necessary documentation, including but not limited to policies and procedures, training, communication, and inspections;
- (c) Require frequent and regular documented inspections by Contractor designated Competent Person of the Project Site, materials and equipment;
- (d) Document weekly safety meetings as required under Sec. 3.6.1.6.3(a); and
- (e) Include all the elements of a Safety Plan required by Federal, state and local OSHA or other applicable Safety Laws. Applicable OSHA regulations found in 29 CFR 1926 highlight other required standards and elements of a Safety Plan. If work on the Site includes a discipline or element for which OSHA or other Safety Laws have issued a governing law or standard, the Contractor should ensure that necessary Site policies/procedures, training, communication, and inspections are accomplished and implemented to ensure compliance.

In addition, Walmart may go above and beyond the Safety Laws as further described in Specifications.

3.6.4.3 WORK SEGREGATION, SITE SECURITY AND SITE PROTECTION

3.6.4.3.1 Mixture of Work Environments. When activities classified as General Industry (as defined by OSHA Section. 1910), and Construction (as defined by OSHA Section. 1926), occur at a single location and both safety standards could be in effect, the Contractor must completely and effectively segregate the Construction Work from General Industry environment (retail environment) to the extent that any exposures created by the Work does not create a hazardous or non-compliant situation/environment for Walmart Associates, vendors, suppliers, and customers. This applies to any and all hazardous conditions generated by the Work. See Specifications for additional obligations.

3.6.4.3.2 Site Security and Protection. Contractor shall be responsible for the security of the Project Site, including the security of all tools, materials, equipment and completed Work on the Site. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (a) Walmart Associates on the Site and all other persons who may be affected by the Project;
- (b) Work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Subcontractors; and
- (c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

3.6.4.3.3 Access Control – Badge Requirement. Contractor shall create, implement and enforce throughout the term of this Contract access control procedures for the Project site, which shall include the use of a Badge system. This Badge system and protocol shall meet the requirements set forth in Sec. 3.6.5 of this Compliance Exhibit and its corresponding or referenced Specifications.

3.6.4.3.4 Perimeter Controls and Safeguards. Contractors, without any increase in the Contract Sum, shall take such reasonable actions as may be necessary to maintain security on the Site, including, but not limited to, the control of the Site perimeter through erection of temporary security fencing or other barriers around the Project Site. In the event that perimeter control methods are used, Contractor shall monitor such controls to ensure the integrity of such controls is maintained at all times.

3.6.4.3.5 Hazard Safeguards. Contractor shall provide reasonable safeguards for safety and protection of persons. See Specifications.

3.6.4.3.6 Non-Compliant Equipment or Material. Contractor shall keep the Project Site clear of any machinery, tool, material, or equipment which is not in compliance with any applicable Safety Law or other Compliance Requirement.

3.6.5 **WORKER VERIFICATION** Contractor will comply with all Worker Verification Laws. Contractor shall implement a verification program through which Contractor shall ensure that all Workers on the Project Site are employed in compliance with the Worker Verification Laws. As part of this program, Contractor shall communicate, require and ensure compliance by each and every Subcontractor with all requirements under the Contract Documents, this Compliance Exhibit and the corresponding or referenced Specifications.

3.6.5.1 VERIFICATION PROCEDURES

3.6.5.1.1 The eligibility of each Worker on the Project shall be verified by their employer’s Qualified Verifier, who will review that Worker’s Verification Documents to ensure that the Form I-9 is completed in accordance with all relevant Worker Verification Laws.

3.6.5.1.2 All Verification Documents are required to be maintained and to be produced by the Worker’s Employer for review by the WV Auditor as set forth in this Compliance Exhibit and its corresponding or referenced Specifications.

3.6.5.2 WV FORMS

3.6.5.2.1 Worker Verification Forms (“WV Forms”). Verification of eligibility will be documented by execution of the appropriate WV Form confirming eligibility of Workers in compliance with all applicable Worker Verification Laws and Compliance Requirements. WV Forms shall be in the exact form as attached to the Compliance Specifications.

3.6.5.2.2 WV Forms – Use, Retention and Production. Fully executed WV Forms shall be collected by Contractor for all Subcontractor Workers, maintained by Contractor throughout the life of the Contract, and shall be produced to Walmart and/or WV Auditor immediately upon Walmart’s request.

3.6.5.3 ACCESS CONTROL

3.6.5.3.1 Badge Requirement. Contractor shall create, implement and enforce throughout the term of this Contract access control procedures for the Project site which meets the requirements of this Compliance Exhibit and its corresponding or referenced Specifications, and which shall include the use of a Badge system.

3.6.5.4 WORKER VERIFICATION AUDITS. Contractor acknowledges and agrees that the Project Site may be randomly selected or selected for cause, in Walmart's sole discretion, to be audited for purposes of Worker Verification Compliance.

3.6.5.4.1 Cooperation. Contractor shall, and shall cause its Subcontractors to, cooperate with the WV Auditor and provide the WV Auditor with access to such documentation and personnel as may be necessary to complete any certification, review or audit, including but not limited to WV Forms and Verification Documents. In no event shall Walmart's rights and remedies, including its right to terminate this Contract immediately, be limited hereunder as a result of the cooperation or correction/resolution of any issue, problem or circumstance of non-compliance.

3.6.5.4.2 Timing. All audits in this Section shall be completed and reported within ten (10) business days from the date of Walmart's request.

3.6.5.4.3 Auditing for Cause. Walmart shall commence a Worker Verification Audit for Cause If Walmart becomes aware of evidence, which in Walmart's sole discretion appears to be reasonably credible, that a Worker's eligibility is not properly documented and/or verified.

3.6.5.4.4 Audit Results. At the conclusion of the audit, the WV Auditor will submit the results of the audit to Walmart and Contractor in the form of the "Worker Verification Auditor Certification," attached to the Compliance Specifications Results of Audits conducted by the WV Auditor are classified as follows:

- (a) Pass Results. Contractor or Subcontractor shall be deemed to have "passed" the audit if:
 - 1. Contractor or Subcontractor has verified the employment eligibility and identity of the Workers on the Project pursuant to Form I-9 requirements;
 - 2. The employer of the Worker has correctly completed the relevant sections of the Forms I-9 for those employees; and
 - 3. Contractor and Subcontractors are in compliance with all applicable Worker Verification Laws with respect to such Workers (with the exception of Form I-9 timeliness violations).
- (b) Remediated Results. Contractor or Subcontractor shall be deemed to have "remediated" the audit if:
 - 1. For violations which, in the WV Auditor's judgment, are eligible for correction, Contractor or Subcontractor have corrected such violations within the period of time allotted for conducting the audit; or
 - 2. Where not eligible for correction, Worker is removed from the Project Site immediately; and
 - 3. Contractor or Subcontractor otherwise passes the audit.
- (c) Failure Results. The Contractor or Subcontractor shall be deemed to have "failed" the audit in all other instances, including, without limitation, the failure of the Contractor or the Subcontractor(s) to participate or cooperate with any audit and/or to maintain documentation required by this Compliance Exhibit.

3.6.5.5 EXPENSES.

3.6.5.5.1 Reasonable Expenses Reimbursed. Reasonable expenses incurred by Contractor in connection with random audits conducted pursuant to, and which meet the requirements under this Compliance Exhibit and its corresponding or referenced Specifications, shall be reimbursed by Walmart.

3.6.5.5.2 Expenses Not Reimbursed. Any expenses incurred by Contractor in connection with Auditing for Cause, or which exceed the reasonable expenses allowed by Walmart shall be borne by the Contractor and shall not be reimbursed by Walmart.

EXHIBIT 4.1

CHANGE ORDER DELIVERABLES/COMPENSATION

(Issued at Out to Bid or as Modified by Addendum)

TABLE OF CONTENTS

Change Requests – Mixed Crew Hourly Labor Rate Workbook (May 2015)

Change Requests – Procedures and Instructions (May 2015)

Change Requests – Submittal Workbook (May 2015)

Change Requests – Unforeseen Condition or Time and Material Forms (May 2015)

EXHIBIT 5.3.2

FORM OF CONTRACTOR FINAL UNCONDITIONAL WAIVER

This Contractor Final Unconditional Waiver is made on _____, 201____, by _____ (“**Contractor**”), a contractor retained by or on behalf of _____ (“**Walmart**”), in connection with construction of improvements for and to a _____, located in _____ (the “**Project**”).

1. **Unconditional Waiver:** Contractor represents that it has received full payment for all work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Contractor in connection with the Project (“**Work**”) performed or furnished on or before _____, 201____ (the “**Paid-Through Date**”), except for unpaid retainage in the amount of \$_____ (“**Accrued Retainage**”). Contractor hereby unconditionally waives, releases and forever discharges the Project, Walmart, and its respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (collectively, the “**Releasees**”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued (“**Claims**”), which Contractor ever had, now has or might hereafter have, that are in any way connected with or related to Work performed or furnished on or before the Paid-Through Date, without waiving Contractor’s claim for payment of Accrued Retainage.

2. **Conditional Waiver:** Contractor requests payment of \$_____ (the “**Requested Payment**”) as payment in full for all Work performed by Contractor on the Project, including Accrued Retainage. Conditioned only on the receipt of the Requested Payment, Contractor hereby waives, releases and forever discharges the Releasees of and from all Claims which Contractor ever had, now has or might hereafter have, that are in any way connected with or related to Work performed or furnished on the Project.

3. **Payments to Subcontractors:** Contractor represents that it has fully paid all employees, subcontractors, suppliers and others entitled to payment for Work performed or furnished on or before the Paid-Through Date. To the greatest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Contractor.

CONTRACTOR

By: _____
Name:
Title:

State of:
County of:

SUBSCRIBED and SWORN before me the _____ day of _____, 201____, by _____, who is personally known to me.

Name:
Notary Public

My commission expires: _____

EXHIBIT 5.3.4

FORM OF SUBCONTRACTOR FINAL UNCONDITIONAL WAIVER

This Subcontractor Final Unconditional Waiver is made on _____, 201____, by _____ (“**Subcontractor**”), a subcontractor or supplier retained by or on behalf of _____ (“**Contractor**”), in connection with construction of improvements for and to a _____ located in _____ (the “**Project**”), which is owned by _____ (“**Walmart**”).

1. **Payment Status:** Subcontractor represents that it has received full and final payment for all work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Subcontractor in connection with the Project (“**Work**”).

2. **Unconditional Waiver:** Subcontractor hereby unconditionally waives, releases and forever discharges the Project, Contractor, Walmart, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (collectively, the “**Releasees**”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued (“**Claims**”), which Subcontractor ever had, now has or might hereafter have, that are in any way connected with or related to the Project.

3. **Payments to Subcontractors:** Subcontractor represents that it has fully paid all employees, subcontractors and suppliers of any tier and other entitled to payment for Work performed or furnished for the Project. To the greatest extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Subcontractor.

SUBCONTRACTOR

By: _____
Name:
Title:

State of:
County of:

SUBSCRIBED and SWORN before me the _____ day of _____, 201____, by _____, who is personally known to me.

Name:
Notary Public

My commission expires: _____

EXHIBIT 6.2.3(1)

FORM OF SUBCONTRACTOR PARTIAL WAIVER

This Subcontractor Partial Waiver is made on _____, 201____, by _____ (“**Subcontractor**”), a subcontractor or supplier retained by or on behalf of _____ (“**Contractor**”), in connection with construction of improvements for and to a _____ located in _____ (the “**Project**”), which is owned by _____ (“**Walmart**”).

1. **Payment Status:** Subcontractor represents that the following are true and accurate statements concerning the price of, and payments received and owed for, the work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Subcontractor in connection with the Project (“**Work**”):

Original Subcontract Price:	\$ _____
Total of Subcontract Price Adjustments to Date:	\$ _____
Total of Payments Previously Received by Subcontractor:	\$ _____
Total Unpaid Balance of Subcontract Price (including retainage):	\$ _____
Total Amount Owed for Work Performed After Paid-Through Date:	\$ _____

2. **Unconditional Waiver:** Subcontractor represents that it has received full payment for all Work performed or furnished on or before _____, 201____ (the “**Paid-Through Date**”), except for unpaid retainage in the amount of \$ _____ (“**Accrued Retainage**”). Subcontractor hereby unconditionally waives, releases and forever discharges the Project, Contractor, Walmart, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (collectively, the “**Releasees**”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued (“**Claims**”), which Subcontractor ever had, now has or might hereafter have, that are in any way connected with or related to Work performed or furnished on or before the Paid-Through Date, without waiving Subcontractor’s claim for payment of Accrued Retainage.

3. **Payments to Subcontractors:** Subcontractor represents that it has fully paid all employees, subcontractors and suppliers of any tier and other entitled to payment for Work performed or furnished on or before the Paid-Through Date. To the greatest extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Subcontractor.

SUBCONTRACTOR

By: _____
Name:
Title:

State of:
County of:

SUBSCRIBED and SWORN before me the _____ day of _____, 201____, by _____, who is personally known to me.

Name:
Notary Public

My commission expires: _____

EXHIBIT 6.2.3(2)

FORM OF CONTRACTOR PARTIAL WAIVER

This Contractor Partial Waiver is made on _____, 201____, by _____ (“**Contractor**”), a contractor retained by or on behalf of _____ (“**Walmart**”), in connection with construction of improvements for and to a _____, located in _____ (the “**Project**”).

1. **Unconditional Waiver:** Contractor represents that it has received full payment for all work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Contractor in connection with the Project (“**Work**”) performed or furnished on or before _____, 201____ (the “**Paid-Through Date**”), except for unpaid retainage in the amount of \$_____ (“**Accrued Retainage**”). Contractor hereby unconditionally waives, releases and forever discharges the Project, Walmart, and its respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (collectively, the “**Releasees**”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued (“**Claims**”), which Contractor ever had, now has or might hereafter have, that are in any way connected with or related to Work performed or furnished on or before the Paid-Through Date, without waiving Contractor’s claim for payment of Accrued Retainage.

2. **Conditional Waiver:** Contractor requests payment of \$_____ (the “**Requested Payment**”) as full payment for all Work performed between the Paid-Through Date and _____, 201____ (the “**Applicable Payment Period**”). Conditioned only on the receipt of the Requested Payment, Contractor hereby waives, releases and forever discharges the Releasees of and from all Claims which Contractor ever had, now has or might hereafter have, that are in any way connected with or related to Work performed or furnished before or during the Applicable Payment Period, without waiving Contractor’s claim for payment of Accrued Retainage.

3. **Payments to Subcontractors:** Contractor represents that it has fully paid all employees, subcontractors, suppliers and others entitled to payment for Work performed or furnished on or before the Paid-Through Date. To the greatest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Contractor.

CONTRACTOR

By: _____
Name:
Title:

State of:
County of:

SUBSCRIBED and SWORN before me the _____ day of _____, 201____, by _____, who is personally known to me.

Name:
Notary Public

My commission expires: _____

EXHIBIT 7.5.1(1)

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That _____

(hereinafter called the "Principal"), as Principal and _____
_____, a corporation, duly authorized to do business in _____ (project state)
(hereinafter called the "Surety"), are held and firmly bound unto WAL-MART STORES, INC. (hereinafter called
the "Obligee"), and its representatives, successors and assigns, in the sum of
_____ Dollars (\$ _____) for the payment of which
sum well and truly to be made the said Principal and Surety bind themselves, and their respective heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has been awarded a contract with Obligee for _____
_____ (hereinafter called the "Contract") and which Contract is
hereby referred to and incorporated by express reference as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Principal
shall well and truly perform all the work, undertakings, covenants, terms, conditions, and agreements of said
Contract within the time provided therein and any extensions thereof that may be granted by Obligee, and during the
life of any maintenance obligation, guaranty or warranty required under said Contract, and shall also well and truly
perform all the undertakings, covenants, terms, conditions, and agreements of any and all modifications of said
Contract that may hereafter be made, and shall indemnify and save harmless said Obligee of and from any and all
loss, damage, and expense, including costs and attorneys' fees, which the said Obligee may sustain by reason of
Principal's failure to do so, then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, waiver, or other
modification of the terms of either the said Contract or in the said work to be performed, or in the specifications, or
in the plans, or in the Contract documents, or any forbearance on the part of either the Obligee or Surety to the other,
shall in any way affect said Surety's obligation on this Bond, and said Surety does hereby waive notice of any such
changes, extensions of time, alterations, additions, omissions, waivers, or other modifications.

The parties executing this Bond on behalf of Principal and Surety represent and warrant that they are duly
authorized to bind the Principal and Surety, respectively.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL: _____

By: _____

Title: _____

(Principal's Address)

Witness:

Or Secretary's Attest

[SEAL]

SURETY: _____

By: _____

Title: _____

(Surety's Address)

Witness:

Or Secretary's Attest

[SEAL]

Attach Power of Attorney if executed by attorney-in-fact on behalf of Surety

EXHIBIT 7.5.1(2)

FORM OF PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That _____
_____ (hereinafter called the "Principal"), as Principal and _____
_____, a corporation, duly authorized to do business in
_____ (project state), (hereinafter called the "Surety"), are held and firmly bound unto
WAL-MART STORES, INC. (hereinafter called the "Obligee"), and its representatives, successors and assigns, in
the sum of _____ Dollars (_____) for the payment of which
sum well and truly to be made the said Principal and Surety bind themselves, and their respective heirs,
administrators, executors, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the Principal has been awarded a contract with Obligee for _____
_____ (hereinafter called the "Contract") and
which Contract is hereby referred to and incorporated by express reference as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly
make payment in full to all persons or entities supplying labor, material, supplies, services, utilities and equipment in
the prosecution of the work provided for in said Contract and any and all modifications of said Contract that may
hereafter be made, and shall indemnify and save harmless said Obligee of and from any and all loss, damage, and
expense, including costs and attorneys' fees, which the said Obligee may sustain by reason of Principal's failure to
do so, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, waiver, or other
modification of the terms of either the said Contract or in the said work to be performed, or in the specifications, or
in the plans, or in the Contract documents, or any forbearance on the part of either the Obligee or Principal to the
other, shall in any way affect its obligation on this Bond, and Surety does hereby waive notice of any such changes,
extensions of time, alterations, additions, omissions, waivers, or other modifications.

The said Principal and the said Surety agree that this Bond shall inure to the benefit of all persons or entities as
supplying labor, material, supplies, services, utilities and equipment in the prosecution of the work provided for in
said Contract, as well as to the Obligee, and that any of such persons or entities may maintain independent actions
upon this Bond in the name of the person or entities bringing any such action.

The parties executing this Bond on behalf of Principal and Surety represent and warrant that they are duly
authorized to bind the Principal and Surety, respectively.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____ day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL: _____

By: _____

Title: _____

(Principal's Address)

Witness:

Or Secretary's Attest

[SEAL]

SURETY: _____

By: _____

Title: _____

(Surety's Address)

Witness:

Or Secretary's Attest

[SEAL]

Attach Power of Attorney if executed by attorney-in-fact on behalf of Surety

CONSTRUCTION CONTRACT BETWEEN WALMART AND CONTRACTOR

TABLE OF CONTENTS

ARTICLE 1 GENERAL PROVISIONS

- 1.1 PROJECT SPECIFIC TERMS
- 1.2 BASIC DEFINITIONS, CONTRACT DOCUMENTS AND WORK
- 1.3 EXECUTION, CORRELATION AND INTENT
- 1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

ARTICLE 2 WALMART

- 2.1 INFORMATION AND SERVICES REQUIRED OF WALMART
- 2.2 WALMART'S CONSTRUCTION MANAGER
- 2.3 WALMART'S CONSULTANTS
- 2.4 WALMART'S RIGHT TO CARRY OUT THE WORK
- 2.5 WALMART'S ADMINISTRATION
- 2.6 THIRD-PARTY ADMINISTRATION
- 2.7 CONSTRUCTION BY WALMART OR BY SEPARATE CONTRACTORS

ARTICLE 3 CONTRACTOR

- 3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS
- 3.2 SUPERVISION AND CONSTRUCTION PROCEDURES
- 3.3 EQUIPMENT AND MATERIALS
- 3.4 WARRANTY
- 3.5 SUBCONTRACTORS
- 3.6 COMPLIANCE
- 3.7 CONTRACTOR'S SUPERINTENDENT(S) AND TEAM
- 3.8 CONSTRUCTION SCHEDULES AND REPORTS
- 3.9 DOCUMENTS AND SAMPLES AT THE SITE
- 3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
- 3.11 USE OF SITE
- 3.12 CUTTING AND PATCHING
- 3.13 CLEANING UP
- 3.14 ACCESS TO WORK
- 3.15 ROYALTIES AND PATENTS
- 3.16 INDEMNIFICATION

ARTICLE 4 CHANGES IN THE WORK

- 4.1 GENERAL
- 4.2 CHANGE ORDER PROCEDURES
- 4.3 AUDIT

ARTICLE 5 CONTRACT TIME AND COMPLETION

- 5.1 COMMENCEMENT AND PERFORMANCE
- 5.2 SUBSTANTIAL COMPLETION
- 5.3 FINAL COMPLETION
- 5.4 EXCUSED DELAYS

ARTICLE 6 COMPENSATION AND PAYMENTS

- 6.1 CONTRACT SUM
- 6.2 SCHEDULE OF VALUES AND PROGRESS PAYMENTS
- 6.3 DENIAL OF APPLICATION FOR PAYMENT
- 6.4 PAYMENTS TO SUBCONTRACTORS

ARTICLE 7 INSURANCE AND BONDS

- 7.1 CONTRACTOR'S LIABILITY INSURANCE
- 7.2 INSURANCE POLICY LIMITS AND COVERAGES
- 7.3 OTHER TERMS
- 7.4 PROPERTY INSURANCE
- 7.5 PERFORMANCE AND PAYMENT BONDS

ARTICLE 8 CLAIMS AND OTHER RIGHTS AND REMEDIES

- 8.1 RIGHTS AND REMEDIES
- 8.2 CLAIMS AND DISPUTES
- 8.3 DISPUTE RESOLUTION
- 8.4 TERMINATION
- 8.5 SUSPENSION OF THE WORK
- 8.6 UNCOVERING OF WORK
- 8.7 CORRECTION OF WORK
- 8.8 ACCEPTANCE OF NONCONFORMING WORK

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 ENTIRE AGREEMENT; GOVERNING LAW; VENUE
- 9.2 SUCCESSORS AND ASSIGNS
- 9.3 WRITTEN NOTICE
- 9.4 TESTS AND INSPECTIONS
- 9.5 INTEREST
- 9.6 TREATMENT OF PROPRIETARY INFORMATION
- 9.7 EARLY OCCUPANCY
- 9.8 NON-EXCLUSIVE AND INDEPENDENT CONTRACTOR
- 9.9 GENERAL

- EXHIBIT 1.1.8 CONTRACT DOCUMENTS
- EXHIBIT 1.1.9 SPECIAL CONDITIONS
- EXHIBIT 1.1.14 ALTERNATIVES AND UNIT PRICES
- EXHIBIT 1.1.16 PROJECT MILESTONE COMPLETION DATES
- EXHIBIT 1.1.20 INSURANCE COVERAGES AND LIMITS
- EXHIBIT 3.6 COMPLIANCE
- EXHIBIT 4.1 CHANGE ORDER DELIVERABLES/COMPENSATION [EXHIBIT K]
- EXHIBIT 5.3.2 FORM OF CONTRACTOR FINAL UNCONDITIONAL WAIVER
- EXHIBIT 5.3.4 FORM OF SUBCONTRACTOR FINAL UNCONDITIONAL WAIVER
- EXHIBIT 6.2.3(1) FORM OF SUBCONTRACTOR PARTIAL WAIVER
- EXHIBIT 6.2.3(2) FORM OF CONTRACTOR PARTIAL WAIVER
- EXHIBIT 7.5.1(1) FORM OF PERFORMANCE BOND
- EXHIBIT 7.5.1(2) FORM OF PAYMENT BOND