

APPENDIX C

Montgomery County Public School Facilities

DIVISION 0 - Conditions of the Contract

SECTION 007000 - GENERAL CONDITIONS

The General Conditions are the General Conditions of the Contract for Construction, the included AIA Document A201-2007 edition as modified by Montgomery County Public Schools (MCPS). A vertical line in the left margin of the document indicates where MCPS has added necessary information and where MCPS has added to or deleted from the original AIA text.



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:

(Name and address)

The Board of Education of Montgomery County, Maryland
850 Hungerford Drive
Rockville, Maryland 20850

THE ARCHITECT:

(Name and address)

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(Paragraphs deleted)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract together with the performance bond and payment bond, if any, represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants except as may be expressly provided in the agreement between the Owner and the Architect or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

The Project is the total construction described in the Agreement of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume, whether printed or digital, assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 THE PROJECT SCHEDULE

The Project Schedule shall be defined as the time span commencing with the Owner's notice to proceed and ending with the time completion stipulated in the Agreement. The Project Schedule includes any amendments or revisions thereto, as approved by the Owner. The Project Schedule shall constitute the schedule to be used by the Contractor.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the case of conflict or inconsistency between Drawings and Specifications or within Drawings or Specifications not clarified by addendum, the Contractor shall (1) provide the better quality or greater quantity of Work (2) comply with the more stringent requirement either or both in accordance with the Architect's interpretation. The Contractor shall notify the Architect of discrepancies found before materials are fabricated or Work performed.

§ 1.2.1.1 The Contractor shall adhere to dimension though differing from scale measurements. In the absence of dimension or in case of doubt as to the proper measurement consult the Architect. Actual field dimensions where applicable are to be verified by the Contractor in the field prior to proceeding.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

§ 1.2.4 Design requirements, when shown, specified, or both, shall prevail over the standard product of a company or companies named. Deviation from Contract requirements must have approval of the Architect and the Owner.

§ 1.2.5 In the case of a minor omission in the Drawings and/or Specifications, the existence of which is required for functional operations of the completed Project, the labor, materials, time, and supervision required to include such an omission shall be considered to be reasonably inferable to produce the intended results and shall be completed by the Contractor at no increase in the Contract Sum or Contract Time.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor for the Owner is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors. All copies of Instruments of Service, except the Contractor's Record Set, shall be returned or suitably accounted for to the Owner, or request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or

distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Drawings, Specifications, and other documents are and shall be always the property of the Owner and the Owner will retain all common law, statutory, and other reserved rights in addition to the copyright.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the Board of Education of Montgomery County, 850 Hungerford Drive, Rockville, Maryland 20850, and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Contractor understands that the Owner is a public agency and no mechanics' liens are permitted against its property.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [INTENTIONALLY OMITTED]

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site to the extent reasonably required for the execution of the Work and requested by the Contractor in writing. Subsurface investigation data is provided only for the information and convenience of the Contractor. The Owner does not warrant and disclaims responsibility for the location of the utilities or the accuracy of tests concerning the soil surface, and subsurface structures and conditions. The Owner further disclaims responsibility for interpretation of that data by others, as in projecting soil bearing values, soil stability, and presence, level and extent of underground water. The Contractor warrants that it has made itself familiar with the Project site and obtained all information required by it concerning the conditions of the Project site, including soil, surface and subsurface structures and conditions as well as the location of utilities and the improvements to be constructed. The Contractor is solely responsible for all direct or indirect costs resulting from any conditions differing from those contained in the information provided by the Owner as set forth herein.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 The Contractor will be furnished, free of charge, a minimum of 20 complete sets of Drawings and 20 copies of the Project Specifications, including all addenda. Additional sets or copies if not available will be furnished by the Architect at the actual cost of reproduction and handling.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or to maintain scheduled progress and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 The Contractor represents that it has visited the Project site, familiarized itself with the location and conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents. The Contractor represents that the Contract Documents are sufficient to provide for the efficient performance and completion of the Work in accordance with the Contract Documents and all legal requirements, whether by way of statute, common law, regulation, or building code applicable to the Work. The foregoing includes all Work, whether or not specifically demonstrated in the Contract Documents, which may be reasonably inferred to be required or useful for such performance and completion. The Contractor shall continue to carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.2 or obtained by the Contractor by his own investigation and tests. The Contractor shall at once report to the Owner and Architect all errors, inconsistencies, or omissions discovered. If the Contractor performs any construction activity knowing or having reason to know it involves an error, inconsistency, or omission in the Contract Documents, the Contractor shall assume responsibility for such performance and the cost of correction thereof. The Contractor shall further ensure that the Subcontractors and Sub-subcontractors shall be familiar with the requirements of the Contract Documents.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and the Owner in writing. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs these obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract

Documents for differences between field measurements or conditions and the Contract Documents or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall evaluate the jobsite safety and shall be fully and solely responsible for the jobsite safety of means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 SURVEY, LINES AND LEVELS

The Contractor shall be solely responsible for properly laying out the Work and for all lines and measurements for all of the Work executed under the Contract Documents. The Contractor shall verify the figures shown on the Drawings before laying out the Work and the Contractor will notify the Owner and Architect of any errors or inaccuracies found.

Neither the Architect nor the Owner shall have any responsibility for laying out the Work. In the event there is a discrepancy between the Drawings and the field conditions, the Architect and the Contractor will coordinate and attempt to resolve the difference.

- .1 The Contractor shall establish on the site all necessary reference lines and permanent benchmarks from which the Contractor shall establish building lines and elevations. In the case of exterior Work, a registered land surveyor shall be used by the Contractor to establish the reference lines and permanent bench marks and to lay out the Work. The Contractor shall be solely responsible for the proper location and level of all the Work and for the maintenance of the reference lines and bench marks.
- .2 A registered professional engineer, customarily involved in this type of work shall be used by the Contractor to determine all lines and elevations for various parts of the Work which are exterior to the building shell, including, as the Work progresses: establishment of bench marks and axis lines and other lines and dimensional reference points as required for the information and guidance of all trades; field checking of the building shell and surveys thereof as may be required by the technical sections of the Specifications.
- .3 All dimensions and grades shown on the Drawings are believed to be correct but the Contractor shall verify them at the site and notify the Architect and Owner in writing of any discrepancies found before proceeding with the Work; similarly, as to final lines and grades established by official surveys, the Contractor shall check the Drawings against such established lines and grades and notify the Architect and Owner in writing of any discrepancies found. In the absence of such notifications, extra Work caused by discrepancies shall not entitle the Contractor to additional compensation.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 The Contractor will apply for and the Owner will directly pay for the general building permit, demolition permit, sediment control permit, and WSSC permits. The Contractor shall apply, secure, and pay for all incidental permits including but not limited to, Maryland Department of the Environment Air Quality General Permit to Construct, governmental fees, bonding requirements, and licenses necessary for proper execution and completion of the Work including the use and occupancy permit, local and state transportation department permits to perform Work in a public right-of-way, and electrical permit. No compensation or mark-up for these fees will be allowed on incident permits. The Contractor shall secure all certificates of inspection and occupancy, as may be required by the authorities having jurisdiction over the Work. These shall be delivered to the Architect upon receipt by the Contractor. The Contractor shall notify the Owner of any application for inspection or permits required to be executed, made, or submitted by the Owner.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for correction of such Work and shall bear the costs, losses and expenses attributable to correction.

(Paragraph deleted)

§ 3.7.4 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.5 If the Contractor believes additional cost is due to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 3.7

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be on the job site at all times and shall not be responsible for any other project being constructed by the Contractor. The superintendent shall be permanently assigned to the Project and may not be changed without written consent of the Owner. The Owner shall have the right to require the Contractor to remove from the Project any superintendent whose performance the Owner deems to be unsatisfactory.

(Paragraphs deleted)

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 THE PROJECT SCHEDULE AND PROGRESS OF THE WORK

- .1 The Contractor shall provide, operate and maintain a computerized Project Schedule using the Critical Path Method (CPM) to plan and schedule the execution of the Work, to assist the Owner in appraising the reasonableness of the schedule, to evaluate the progress of the Work, to make progress payments and to make decisions relative to time and/or cost adjustments which may result from changes in the Work. The software utilized for the CPM shall be the current version of Primavera Project Planner.
- .2 It is expressly understood and agreed that the time of beginning, the rate of progress and the time of completion of the Work are of the essence of this Contract. The Work shall be executed with such progress as required to prevent any delay to the Contract milestone dates and the general completion of the Contract. The Contractor shall mitigate, to the maximum extent possible, delays to the Work, regardless of the cause of such delay.

- .3 By execution of the Contract, the Contractor represents that he has closely analyzed the Work, the materials, the equipment and methods of construction involved, the availability of skilled and unskilled labor, restrictions of the site, all testing, inspections and approvals, constraints imposed by the Contract and his own work load and capacity to perform the Work and agrees that the specified times are reasonable considering the existing conditions prevailing in the locality of the Work, including weather conditions and other factors, with a reasonable allowance for variations from average.

§ 3.10.2 RESPONSIBILITIES

- .1 The Contractor shall continuously employ or retain the services of a Construction Scheduler. The Construction Scheduler shall have at least five (5) years of verifiable experience as the person primarily responsible for preparing and maintaining detailed project schedules on projects of the same or similar size and nature as this project. Within seven (7) calendar days of the Contractor's receipt of the Notice to Proceed, the Contractor shall provide the identification, qualifications and experience of the Contractor's Construction Scheduler and all other members of the Contractor's scheduling staff to the Owner.
- .2 The Owner shall have the right to approve or disapprove the use of the proposed Construction Scheduler for this project and will notify the Contractor within seven (7) calendar days from receipt of the Contractor's information. In the case of disapproval, the Contractor shall resubmit another Construction Scheduler within seven (7) calendar days for renewed consideration. No progress payments will be made until the Contractor's Scheduler is approved and has submitted the ninety (90) day Project Schedule.
- .3 The Contractor shall provide the sequencing, logic, duration, cost and manpower requirements of all activities, the initial CPM network diagram, supporting tabular reports and an electronic copy of same on Owner-approved electronic medium. Following acceptance of the initial Baseline Project Schedule by the Owner, the Contractor shall update the percentage complete, the remaining duration, the actual start date and actual finish date of each activity on a monthly basis concurrent with each Application for Payment. The Contractor shall provide an updated CPM network diagram, supporting tabular reports and an electronic copy of same on a monthly basis. The Contractor is at all times fully and totally responsible for the Project Schedule and is to direct its forces in a manner that will allow for completion of the Work within the Contract Time and the Contract Sum.
- .4 The information provided by the Contractor in accordance with 3.10.2.3 shall represent its best efforts and the best efforts of its Subcontractors and the Sub-subcontractors to schedule the Work. Similarly, progress information submitted by the Contractor shall be an accurate representation of its actual performance. The Project Schedule shall at all times reflect an accurate record of the Contractor's actual progress as well as a reasonable and attainable projection of remaining Work. If the Progress Schedule does not represent the actual prosecution of the Work or an accurate projection of remaining Work, the Owner may, in its sole and exclusive judgment, direct the Contractor to revise the Project Schedule. Such revision shall be at no increase in the Contract Time or Contract Sum.

§ 3.10.3 PROJECT SCHEDULE PREPARATION AND REQUIREMENTS

- .1 Prior to the commencement of the Work, the Contractor shall submit to the Owner a Preliminary Schedule, prepared in accordance with this Subparagraph, covering the first ninety (90) calendar days of construction operations. The Contractor shall not receive payment for any work until this partial Schedule is accepted by the Owner.
- .2 Within forty-five (45) calendar days following the Notice to Proceed, the Contractor shall submit to the Owner its proposed Baseline Project Schedule, including a CPM network diagram, supporting tabular reports and an electronic copy of same. The Baseline Project Schedule shall

include submittal, approval, fabrication and delivery of equipment and materials as well as construction activities. The Contractor shall submit a CPM network diagram, a tabular report sorted by activity ID, a tabular report sorted by total float, a predecessor/successor report sorted by activity ID, a cost loading report, a manpower loading curve, a project calendar and an electronic copy of the Schedule.

- .3 The Owner and/or its Consultant shall conduct a review of the Baseline Project Schedule and provide written comments to the Contractor within fourteen (14) calendar days following submittal by the Contractor. The Contractor shall review the Owner's comments and if required, revise and resubmit the Baseline Project Schedule within fourteen (14) calendar days. Such revision shall be at no increase in the Contract Time or Contract Price. Approval of the Baseline Project Schedule by the Architect or Owner shall not relieve the Contractor from compliance with the requirements of the Contract.
- .4 The detailed CPM network diagrams shall show the sequence and interdependence of activities required to execute the Work of the Contract. It shall be constructed to show the order in which the Contractor proposes to carry out the Work, to indicate restrictions of access and to show availability of work areas and availability and use of manpower, materials and equipment. The Contractor shall utilize the network diagrams and tabular reports in planning, scheduling, coordinating and performing the Work under the Contract, including all activities of Subcontractors, equipment vendors and suppliers.
- .5 The degree of detail of the Project Schedule and the selection and number of activities shall be subject to the approval of the Owner and/or its Consultant, and shall include, but not be limited to:
 - .a Contract completion date and milestones, substantial completion dates, beneficial occupancy dates, phased occupancy dates, restraints of work in the Contract and the final completion date, as required by the Contract;
 - .b Type of work to be performed, the sequences and the labor trades involved;
 - .c All submittals, approvals, fabrication and delivery of construction materials and major pieces of equipment purchased for the Contract;
 - .d All construction interface requirements involving Owner Furnished Equipment (OFE), including early and late delivery dates, provisions for storage and protection of OFE, and installation.
 - .e Approvals required by regulatory agencies or other third parties;
 - .f All subcontract work;
 - .g Scheduling of work to be performed by Utility Companies or other third parties upon which work to be performed under this Contract is dependent;
 - .h Required tests, submission of test reports and approval of test reports;
 - .i All start-up testing, commissioning and training activities required under the Contract;
 - .j Punchlist and final clean-up; and
 - .k Identification of any manpower, material or equipment restrictions, as well as any activity requiring unusual shift work, such as two (2) shifts per day, six (6) day work weeks, specified overtime or work at times other than regular days or hours, shall be clearly identified on the Project Schedule.
- .6 The activities included in the Project Schedule shall be analyzed in detail to determine activity time durations in units of project workdays. Duration shall be based on the optimum labor, equipment and materials required to perform each activity on a normal workday basis. No on-site activity shall have a duration greater than fifteen (15) work days except non-construction activities such as submittals, submittal reviews, fabrication and delivery of materials or equipment, concrete curing and testing. Only on-site construction activities will be shown as resource loaded to reflect cost and manpower, except for those non-construction activities specifically approved by the Owner for cost loading.

- .7 The Project Schedule shall contain adequate "group codes" to enable the logical sorting of activities. At a minimum, the schedule should contain codes for major work areas, floors or levels, building elevations, and the Subcontractor or party responsible for that work activity.
- .8 The Project Schedule shall utilize only one project calendar (unless multiple calendars are required by Section 3.10.3.5.k)
- .9 The Contractor's failure to include in its Project Schedule any element of the Work required for the performance of the Contract shall not excuse the Contractor from completing the Work of the Contract within the Contract Time.
- .10 **COST LOADING:** Within the Baseline Project Schedule the Contractor shall allocate the cost required to complete each construction activity. The cost shall accurately represent the cost to the Contractor for labor, equipment and materials inclusive of the Contractor's field and home office overhead and profit. The Contractor's field and home office overhead and profit for each activity shall be developed on a pro-rata basis and included in the total cost for each activity. The sum of all activity costs shall equal the Contract Sum. The Contractor shall certify that its cost allocation is accurate and that the value assigned to each activity represents the Contractor's estimated direct cost, overhead and profit of performing that activity. The Schedule of values shall be derived from and be consistent with this cost data. The Owner shall be entitled to rely on this cost data for additive and deductive Change Orders. If, in the sole and exclusive opinion of the Owner and/or its Consultant, the cost data is not accurate: i.e., is unbalanced, the Contractor shall present to the Owner such documentation as the Owner and/or its Consultant may require to substantiate its cost data and allocation.
- .11 Should the Contractor not submit cost data acceptable to the Owner, the Owner may impose cost data to facilitate Applications for Payment without any increase in the Contract Time or Contract Sum until such time as the Contractor submits acceptable cost data. The Contractor shall continue to work during this period.
- .12 The following computer generated reports in hard copy and in electronic format shall be required as part of the Baseline Project Schedule and each monthly update thereof as a condition precedent to the receipt of progress payments under the Contract:
 - .a Earned Value Report, in tabular format, sorted by organizational responsibility, including cumulative earnings for each activity, for the Contractor, for each Subcontractor, and for the entire Project; and
 - .b Net and Cumulative Cash Flow Earnings and Projection, in histogram and tabular formats, for the entire Project.
- .13 Within the Baseline Project Schedule the Contractor shall allocate the manpower required to complete each construction activity. The following computer generated reports in hard copy and in electronic format shall be required as part of the Baseline Project Schedule and each monthly update thereof as a condition precedent to the receipt of progress payments under the Contract:
 - .a Manpower Report, in tabular format, sorted by organizational responsibility for the Contractor and each Subcontractor, comparing the Baseline Project Schedule with the monthly updated actual and projected manpower.
- .14 The following computer generated data in hard copy and in electronic format shall be required as part of the Baseline Project Schedule submittal and each monthly update thereof as a condition precedent to the receipt of progress payments under the Contract:
 - .a Schedule report activity number from lowest to highest;
 - .b Schedule report by total float from lowest to highest, then by early start;
 - .c Schedule report by early start date for the next fifty (50) work days, then by activity number;

- .d Cost reports as required by 3.10.3.12;
- .e Manpower report as required by 3.10.3.13; and
- .f Network diagrams shall be prepared with a title block and a calendar day time line on each page. The network diagram shall be a time scaled precedence format showing a continuous flow of information from left to right. The critical path shall be clearly and graphically identified on the network diagrams.

§ 3.10.4 PROJECT SCHEDULE UPDATES

- .1 The Contractor shall be responsible for updating the percentage complete, the remaining duration, the actual start date and actual finish date of each activity on a monthly basis. The Contractor may modify the Project Schedule to reflect actual sequencing of the Work and other factors which impact the Project Schedule with the prior concurrence of the Owner.
- .2 If the update of the Project Schedule indicates delays to the critical path of the Project, the Owner may require that the Contractor provide a Recovery Schedule and Report setting forth the Contractor's plan to eliminate these delays as set forth in paragraph 3.10.5. If the Owner makes such a request, the Contractor shall provide its Recovery Schedule and Report within seventy-two (72) hours of the Owner's request. The submittal of the Recovery Schedule and Report shall be a condition precedent to the receipt of progress payments under the Contract.
- .3 The following computer generated data in hard copy and in electronic format shall be required as part of each monthly update thereof as a condition precedent to the receipt of progress payments under the Contract:
 - .a Schedule report activity number from lowest to highest;
 - .b Schedule report by total float from lowest to highest, then by early start;
 - .c Schedule report early start date for the next fifty (50) work days, then by activity number;
 - .d Cost reports as required by 3.10.3.13; and
 - .f Network diagrams shall be prepared with a title block and a calendar day time line on each page. The network diagram shall be a time scaled precedence format showing a continuous flow of information from left to right. The critical path shall be clearly and graphically identified on the network diagrams.
- .4 A monthly Update Schedule Narrative Report summarizing the current status of the following information shall be a condition precedent to receipt of monthly progress payments:
 - .a the status of interim and completion milestones;
 - .b the critical path of the Project;
 - .c major work performed during the preceding period;
 - .d major work planned to be within the succeeding period;
 - .e all modifications to the schedule; and
 - .f concerns regarding prosecution of the Work.
- .5 Upon the Owner's acceptance and approval of the monthly schedule update submitted by the Contractor, the Monthly Project Schedule Update will become the Baseline Project Schedule.

§ 3.10.5 RECOVERY SCHEDULE

- .1 In the event it becomes apparent from the updated Project Schedule that any Milestone Date or Substantial Completion Date previously established in the Project Schedule may not be met, the Contractor shall, at the Owner's request, take any or all of the following actions with no increase in Contract Time or Contract Sum:
 - .a Increase construction manpower to substantially eliminate the delay and return the Project to schedule:

- .b Increase the number of working hours per shift, shifts per day or the amounts of construction equipment or any combination of the foregoing which will substantially eliminate the delay and return the Project to schedule;
- .c Reschedule activities to the maximum degree practicable to concurrently accomplish the Work within the Time required by the Contract Documents; and
- .d Modify the Project Schedule and submit this Recovery Schedule to the Owner for approval.

If the Contractor fails to take any of these actions within seventy-two (72) hours after receiving notice from the Owner, the Owner may (1) take action to attempt to return the Project to schedule and (2) deduct the cost of such actions from the monies due or to become due to the Contractor.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect with prior approval of the Owner has given

written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The 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 the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Further Submittal requirements are in Division 1 of the Project Manual, Section 01330.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's Work with, and secure the approval of, the Owner before using any portion of the site.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All other areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract on a regular basis. Contractor shall maintain all turf areas, including the public right-of-way bordering school property up to the curb, and landscaping that are not to be disturbed by the Work. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 The Contractor shall keep all sidewalks bordering school property clear of debris and maintain snow and ice removal when necessary to comply with local codes.

§ 3.15.3 If the Contractor fails to clean up or maintain turf areas, sidewalks, and landscaping, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless and defend the Owner, its directors, employees, representatives, and agents from and against any and all claims, losses, damages, and liabilities, including attorneys' fees and expenses, including but not limited to claims for bodily injury, personal injury, sickness, death, or property damage, including loss of use, which arise in whole or in part from the Work, a breach of terms of this Agreement, or the negligence of Contractor (or those acting under its direction, control or supervision, including Subcontractors). The scope of the duties set forth in this Section 3.18.1 shall not extend to claims, losses, or damages caused by the Owner's sole negligence. Nothing in this indemnity clause or elsewhere in the Contract Documents should under any circumstances be construed as an express or implied waiver of Owner's sovereign immunity protections, or as conferring subrogation or third party beneficiary rights upon any third party who claims to have been injured or otherwise damaged as a result of the Work, any act or omission of Contractor or any of its Subcontractor, or any act or omission of the Owner or any of its contractors or consultants.

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.3 In case of termination of employment of the Architect, the Owner shall appoint a successor Architect whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect or Owner will provide administration of the Contract as described in the Contract Documents and will be included among the Owner's representative (1) during construction (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect and the Owner will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither the Owner nor the Architect will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over or charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, or when direct communications in the opinion of the Owner will facilitate the prosecution of the Work, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Owner's and Architect's evaluations of the Work as provided in Subparagraph 4.2.2 and on the date comprising the Contractor's Applications for Payment, the Architect will review and, with the Owner's prior approval, certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Owner and the Architect shall have the right to determine whether the Work is being performed in accordance with the requirements of the Contract Documents. The Owner and the Architect have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or the Architect considers it necessary or advisable, the Owner or the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner and the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may with prior approval of the Owner authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 15.1.4.

§ 4.2.9 The Architect and/or Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect will issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10 and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives, if any, shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect shall be final and subject to no further proceedings, if consistent with the intent expressed in the Contract Documents.

(Paragraph deleted)

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work or supply a portion of the materials or equipment at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Prior to the application for first payment, a complete list of all proposed Subcontractors, not previously submitted in accordance with Part 6 of the Instructions to Bidders, shall be submitted for acceptance by the Owner. The Owner shall notify the Contractor in writing if the Owner, after due investigation, has reasonable objection to any proposed Subcontractor and does not accept him. Failure of the Owner to make objection promptly to any proposed Subcontractor, excluding those Subcontractors listed in accordance with Part 6 of the Instructions to Bidders shall constitute notice of no reasonable objection. Each Subcontractor may be required to furnish the Owner, in duplicate, through the Architect, proof of his financial stability and experience to perform the particular work in which he will be engaged.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

§ 5.2.4 No Subcontractor, person, or entity previously accepted may be changed without the written permission of the Owner.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.2 All Subcontract Agreements between the Contractor and its Subcontractors shall be written on the Standard Form of Agreement, AIA Document A401, Between Contractor and Subcontractor, 2007 Edition (as modified to reflect the Contract and Owner's requirements of the Contract Documents and the Owner).

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in *(Paragraphs deleted)* writing.

§ 5.4.2 Upon such assignment: (i) Owner shall only be responsible for contractual obligations that accrue in their entirety after the date of assignment, and shall under no circumstances be responsible for payment or other obligations of the Contractor that accrued in whole or in part prior to the assignment and (ii) the Subcontractor(s) or other party(s) whose agreements are assigned shall be obligated to expeditiously proceed with the performance and completion of the specified scope of work in their respective agreements, notwithstanding the pendency of payment disputes with the Contractor.

(Paragraph deleted)

§ 5.5 ASSIGNMENT OF SUBCONTRACTS

§ 5.5.1 At the request of the Owner, the Contractor shall accept assignment of, and liability for, all purchase orders, contracts, subcontracts, and other agreements for procurement of materials, equipment, and services in connection with any related Work as defined in the Summary of Work, Section 01010, or as otherwise set forth in the Contract Documents. The Contractor shall be responsible for such items and services, if any, as if the Contractor had originally entered into the purchase order, contract, subcontract, or other agreement assigned. All warranty and correction of the work obligations under the Contract Documents shall also apply to such items and services assigned. Upon such assignment, the Contractor shall be as fully responsible to the Owner for performance of the Work and provision of materials and for the acts and omissions of the assigned Subcontractors and material suppliers and all persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of all other subcontractors and

material suppliers with whom the Contractor has directly entered into subcontracts or agreements for other portions of the Work.

§ 5.6 REPLACEMENT OF SUBCONTRACTORS

§ 5.6.1 Contractor agrees and understands that it is of paramount importance to Owner for Contractor to achieve timely completion of the Work. Accordingly, in the event Owner determines in its reasonable discretion that (i) Contractor has failed to maintain progress in accordance with the Contractor's Construction Schedule and (ii) lack of performance on the part of one or more Subcontractors (regardless of the reason for such lack of performance) is a substantial cause of the delay, Owner may order Contractor to replace such Subcontractor(s). In such event, Owner may direct Contractor to engage a replacement Subcontractor(s) chosen by Owner, and Contractor shall contract with such replacement Subcontractor(s) on legal terms and conditions substantially similar to those of the terminated subcontract(s), unless Contractor has reasonable, articulable grounds to believe the replacement subcontractor is unqualified to perform the work. In the event the contract sum of the replacement subcontract(s) exceeds the balance remaining under the corresponding terminated subcontract(s), with respect to work not yet performed under the terminated subcontract(s) Owner may in its reasonable discretion agree to adjust the Contract Sum in an equitable manner. In the event Owner does not agree to any such adjustment, and Contractor disagrees with Owner's decision, Contractor may submit a Claim in accordance with Article 15.

§ 5.6.2 Under no circumstances shall Contractor be entitled to an adjustment of the Contract Time or Contract Sum, arising out of Owner's exercise of its rights under Section 5.6.1 above, except to the limited extent it can demonstrate the following as a threshold matter: (i) Owner's determination that the replaced subcontractor(s)' performance was a substantial cause of the underlying delay had no reasonable basis in fact; (ii) in circumstances where the Owner directs the Contractor to engage a specified replacement Subcontractor, that the Contractor raised timely objection to the Owner that the replacement subcontractor was unqualified to perform the work, and the replacement subcontractor in fact was so unqualified; or (iii) in circumstances where the Owner directs the Contractor to engage a specified replacement Subcontractor, that the Contractor offered to contract with an equally qualified replacement Subcontractor, for a substantially lower contract price, and Owner rejected such offer. Upon establishing one or more of the threshold conditions, Contractor's entitlement to relief shall be limited to the extent Contractor can specifically demonstrate that the critical path was impacted, and/or that its reimbursable Costs were increased, as a result.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

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

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

(Paragraph deleted)

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report

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to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

(Paragraphs deleted)

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and reasonably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

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

§ 7.2 CHANGE ORDERS

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

- .1 the change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

Acceptance of a Change Order by the Contractor constitutes an accord and satisfaction and represents payment in full for both Contract Time and Contract Sum and for any and all costs, impacts, cumulative impacts, and for delays and disruptions arising out of, or incidental to, the Work included in the Change Order. Any and all further Claims by the Contractor arising from or in connection with the Work covered by the Change Order are waived. Any attempted reservation of right in connection with a Change Order is null and void.

§ 7.2.2 Change Order Procedures.

§ 7.2.2.1 A written request for a change in the Work may be made by the Owner, the Architect, or the Contractor, but only the Owner may authorize and approve the change. A written request by Contractor for a Change in the Work shall be made within (21) days after the occurrence of the event-giving rise to that Change Order request or such Change Order request shall be waived and the Contractor shall be barred from pursuing litigation on that Change Order request. All changes will be issued in the form of a written "Change Order Form" or as a "Charge to Contract Allowance" initiated by the Architect, signed by the Owner, and Architect, and the Contractor, which authorizes the change in the Work, and indicates mutually agreed upon changes to the Contract Time or Contract Sum (additive and/or deductive) or charged against a Contract Allowance. Change Orders are to be submitted to the Owner with an original and four copies with original signatures by the Architect and Contractor.

§ 7.2.2.2 The Contractor shall furnish, in duplicate, to the Owner and the Architect, a fully itemized breakdown of costs associated with changes requested. All requests for a change in the Work must include a full description for all proposed changes regardless of their nature. For the Work to be performed by Subcontractors, the Contractor shall

furnish the Subcontractor's itemized cost proposal containing an itemized listing of labor and materials, including support material (i.e., invoices from suppliers indicating amount and cost, itemized breakdown of labor cost by category). All change proposals and support material shall be submitted to the Architect and Owner within 21 calendar days after the need for a change had been identified.

§ 7.2.2.3 When changes, alterations, deductions, or additions are requested, the value of such Work will be determined using the following guidelines:

- .1 When unit prices are predetermined as described in these Specifications and are included as part of the Contract with the Owner, proposed changes will be based upon support material indicating the number of units.
- .2 Labor prices for Change Order proposals for both Contractors and Subcontractors shall be the actual hourly rates expended, which in no case may exceed the labor rates for the labor specialty contained in the most current edition of Means Building Construction Cost Data. New rates will take effect for Work to be performed after January 1st of each calendar year.
- .3 Means base labor rates, whether hourly or based upon the activity, may be used. The number of hours to accomplish the work will be reviewed for approval by the architect or its consultants, and the Owner's representatives. The Contractor's or Subcontractor's labor burden percentage shall be the actual rate paid, which will not be allowed to exceed the quoted Workers' Compensation insurance rate plus the Average Fixed Overhead rate by trade.
- .4 Any additional labor cost proposed at time and one-half must be pre-approved by the Owner in writing. This attachment must accompany each Change Order proposal.
- .5 No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the Work.
- .6 Change Orders which include alternates not a part of the original Contract award will be at the alternate price documented in the original bid proposal for a period of up to 120 calendar days from award of the Contract with no additional **mark-up**. Additional mark-ups for alternates accepted after 120 calendar days will be negotiated.
- .7 If a change involves only a credit, the Contract price will be reduced by the net credit received from the Subcontractor or the amount it would have cost the Contractor if the omitted item or Work had not been eliminated.
- .8 If a change involves both an extra and a credit, both sums shall be shown and the two sums balanced to determine the adjusted total extra or credit prior to the calculation of overhead and profit.
- .9 Unless otherwise specified, the allowance mark-up for combined overhead and profit for Change Order Work self-performed by the Subcontractor's and Sub-subcontractor's forces will be based on the Cost of the Work in accordance with the following schedule:

| Cost of the Work | Combined limits on Overhead and Profit |
|------------------|--|
| \$0-999 | 20% |
| \$1,000-4,999 | 18% |
| \$5,000-9,999 | 14% |
| \$10,000-24,999 | 12% |
| Over \$25,000 | To be negotiated. |

Total Cost of Subcontractor's Work shall mean the Cost of the Subcontractor's and Sub-subcontractor's Work plus the Combined Limits for Overhead and Profit (in accordance with the above schedule.)

- .10 Similarly, the allowance for combined overhead and profit for Work performed directly by the Contractor's forces will be based on the Cost of Work in accordance with the schedule set forth in §7.2.2.3.9 above. Otherwise, on Work partly or solely performed by a Subcontractor's and Sub-subcontractors forces the Contractor will be limited to ten percent (10%) overhead and profit on the total value under \$25,000. The limits on overhead and profit allowance to the Contractor for Change Order Work performed partly or solely by a Subcontractor's or Sub-subcontractors forces over \$25,000 will be negotiated but in no event will it exceed ten percent (10%) of the Total Value of Subcontractor's Work.

- .11 Allowable percentage mark-ups for cumulative overhead and profit for both Contractors and Subcontractors includes full and final compensation to Contractor for the cost of bonding, architecture, design and engineering, estimating, field supervision above the level of working foremen including superintendents, coordination, safety, clean-up, assistant superintendents and general foremen, field engineers, accountants, timekeepers, office managers, and other on-site staff, office supplies, drinking water, temporary heat, water, light, and power, safety equipment, clean-up, all items incidental to the work including, but not limited to, small tools, expendables, field offices, trailers, tool trailers, field toilets, dumpsters, personnel vehicles (including pick-up trucks), minor consumables, all other cost of labor, materials, equipment, and overhead or profit not incorporated in the Work or Change Order work and directly or indirectly associated with Work or Change Order work, including home office costs, overhead costs of all sorts including general, administrative, corporate and legal overhead costs, preparation of cost proposals and schedule analyses connected with the Change Order (whether such Change Order is contemplated or implemented), liability, property damage and other insurances, executives, managers, administrators, office managers, supervisors, assistants and other home staff or staff not located on the Project site, and for all impact/cumulative impact costs arising out of or associated with the Change Order Work.

- .12 Owner's Verification Rights.
 - .1 If the Contractor has submitted cost, negotiated pricing data, or time and materials cost in connection with the pricing of any modification to this Contract, unless the pricing was based on unit prices included in the Contract, the Owner or his designated representative shall have the right to examine records, documents, and other data of the Contractor related to negotiation pricing, or performing the modification, in order to evaluate the reasonableness, accuracy, completeness, and currency of the cost or pricing data.
 - .2 The Contractor shall make available at its office the materials described in Subparagraph .1 above, for examination until final payment is made under this Contract.
 - .3 The provisions of Subparagraphs .1 and .2 above apply to all Subcontractors under this Contract.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

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

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

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of actual cost and expenses and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit based on the provisions of Section 7.2.2. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data.

Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.

(Paragraphs deleted)

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

§ 7.3.8 Pending execution of a Change Order pursuant to 7.3.9, amounts covered by the Construction Change Directive may not be included in Applications for Payment. The determination of the Architect shall be treated in accordance with Article 15.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change orders may be issued for all or any part of a Construction Change Directive.

(Paragraph deleted)

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work.

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

§ 8.3 DELAYS BY THE CONTRACTOR

§ 8.3.1 Should the progress of the Work be delayed by any fault, neglect, act, or omission of the Contractor or any person or firm employed by the Contractor, the Contractor shall, at his own cost and expense, work such overtime as may be necessary to make up for all time lost and to avoid delay in completion of the Work, and the Contractor further agrees to compensate the Owner for and hold it harmless against any and all costs, expenses, losses, liability, and damages which it may sustain or incur by reason of such delay. If, in the opinion of the Architect and Owner, the progress of the Work is unsatisfactory, overtime Work will be demanded by the Owner and the Contractor shall institute overtime Work to meet the Construction Schedule at no additional cost to the Owner. The Contractor shall submit within ten (10) days of notice by the Owner a recovery schedule pursuant to Section 3.10.5 indicating how the delay will be remedied. The Owner reserves the right to employ its own forces to meet the Construction Schedule and may deduct and retain from funds due to the Contractor an amount sufficient to pay such additional costs, charges, or damages incurred or reasonably anticipated to be incurred.

(Paragraphs deleted)

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Where the contract is based on a stipulated sum of money or Guaranteed Maximum Price, the Contractor shall submit to the Architect and the Owner before the first Application for Payment, a schedule of values allocating the entire contract sum to the specification sections that are applicable to various portions of the Work, prepared in the MCPS Contractor's Requisition for Payment form and supported by such data to substantiate its accuracy as the Architect and the Owner may require. This schedule, when and only when approved in writing by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 For LEED Projects the following will apply:

- .1 The General Contractor shall coordinate preparation of its Schedule of Values for its part of the Work with preparation of the Contractors' Construction Schedule.
 - .a Correlate line items in the Schedule of Values with other required administrative schedules and forms, including:
 - .1 Contractor's construction schedule
 - .2 Application for Payment Form
 - .3 List of subcontractors

- .4 Schedule of allowances
 - .5 Schedule of alternates
 - .6 List of products
 - .7 List of principal suppliers and fabricators
 - .8 Schedule of submittals
- .b Submit the Schedule of Values to the Architect at the earliest feasible date, but in no case later than 7 days before the date scheduled for submittal of the initial Application for Payment.
- .2 **Format and Content:** Use the Project Manual Table of Contents as a guide to establish the format for the Schedule of Values. Also include all items shown on the drawings but not included in the particular specification section.
- .a **Identification:** Include the following project identification on the Schedule of Values:
 - .1 Project name and location
 - .2 Name of the Architect
 - .3 Project Number
 - .4 Contractor's name and address
 - .5 Date of Submittal
 - .b Arrange the Schedule of Values in a tabular form with separate columns to indicate the following for each item listed: provide a line item for each specification section and a scheduled value for each specification section.
 - .1 Generic name
 - .2 Related Specification Section
 - .3 Name of subcontractor
 - .4 Name of manufacturer or fabricator
 - .5 Name of supplier
 - .6 Change Orders (numbers) that have affected value
 - .7 Dollar value
 - .8 Percentage of Contract Sum to the nearest one-hundredth percent, adjusted to total 100 percent.
 - .c Provide a breakdown of the Contract Sum in sufficient detail to facilitate continued evaluation of Applications for Payment and progress reports. Break principal subcontract amounts down into several line items.
 - .1 Each line item of the Schedule of Values must be broken down into the following 3 categories: Material, Labor & Equipment. This is in order to comply with certain LEED credits.
 - .2 The schedule of values shall contain line items for:
 - a. Diverting a minimum of 95% (by weight) of the waste generated from site preparation and demolition activities as defined in section 02100 and LEED credit MR2.2.
 - b. Diverting a minimum of 75% (by weight) of the waste generated from construction activities as defined in section 01505 and LEED credit MR2.2.
 - c. Implementing the Construction Indoor Air Quality Plan as described in section 01506 and LEED credit EQ3.1.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the most recently

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approved schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment. The Contractor shall comply with the following requirements.

- .1 At the time the Contractor is preparing each monthly application for payment, it will be required that, upon completion of the Contractor's rough pencil draft covering a payment request, and prior to preparing the final draft, the rough draft will be reviewed by the Architect, Owner's representative, and the Contractor. Agreement shall be reached among the three prior to the requisition being forwarded formally to the Architect for subsequent transmittal to the Owner for payment.
- .2 Each Application for Payment shall be prepared by the Contractor on IAC/PSCP form 306.4 Standard Monthly Contractor's Requisition for Payment as prescribed by the Owner. Each such Application shall bear the signature of the Contractor, Architect and Owner's representative and shall be notarized.
- .3 The Contractor shall present the original plus three (3) copies to the Architect for review and processing. The Architect will deliver the original plus two (2) copies to the Owner for acceptance.
- .4 If not otherwise provided in the Contract Documents, sample copies of the Application for Payment Form may be obtained from the Owner upon request. Forms may be reproduced in kind and quantity required by the Contractor.
- .5 The Contractor shall submit a release of liens/claims from each Subcontractor performing Work or supplying materials covered by the previous progress payment.
- .6 All Applications for Payment shall bear the following certification and shall be duly notarized: "I certify that the above is a true statement of the status of Work and materials, and it conforms with the Contract and duly authorized changes; that all just and lawful bills and other charges against the undersigned and the Subcontractors for labor, materials, and equipment required by the Contract have been (and will be) paid in full through all prior requisitions and that all Work is free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work as of the date of the certification."

§ 9.3.1.1 Such Applications shall not include requests for payment for portions of the Work for which the Contractor does not promptly intend to pay to a Subcontractor or material supplier, unless such Work has been performed by the Contractor or any others whom the Contractor promptly intends to pay.

(Paragraph deleted)

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

§ 9.3.2.1 When the Application for Payment includes materials or equipment stored off the job site, the Application for Payment shall be accompanied with a certified statement including:

- .1 description of items;
- .2 bills of sale transferring title to the Owner by proper endorsement;
- .3 location of storage;
- .4 certification that items are currently covered by all contractual requirements, including liability and fire insurance;
- .5 certification that items or any part thereof will not be installed in any other construction project other than Work under this Contract; and
- .6 The Owner shall have the right of access to any portion of the Work at any time for the purpose of inspection thereof, including materials stored off site for which payment is being requested under Paragraph 9.3.2.1.

§ 9.3.2.2 When Application for Payment includes material or equipment stored on the job site, the Application for Payment shall be accompanied by:

- .1 description of items; and
- .2 invoices from the supplier for line items over \$10,000.

§ 9.3.3 For LEED Projects the following will apply:

- .1 Application Preparation: Complete every entry on the form, including notarizations and execution by person authorized to sign legal documents on behalf of the Contractor.
 - .a Every application for payment, including initial, substantial and final completion, shall be accompanied by an accounting of the construction waste generated by the job and the construction waste diverted from landfills as set forth in specifications section 01505 – "Waste Management". Failure to provide this documentation will result in rejection of the pay application.
- .2 Final Payment Application: Administrative actions and submittals which must precede or coincide with submittal of the final Application for Payment include the following:
 - .a Submit a summary of all project waste generated and all required backup documentation per construction waste management section 01505 and LEED credits MR2.1 and MR2.2. Proof that the contractor has diverted the required amount of construction waste from landfills will be prerequisite for final completion.

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

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, by signing the Contractor's Application for Payment with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such

representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly 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 the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure by the Contractor to submit or maintain records or reports requested by the Contract Documents;
- .9 failure by the Contractor to maintain documents and samples at the site in accordance with the Contract Documents; or
- .10 failure by the Contractor to meet all other conditions precedent for payment in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment and all other conditions precedent for payment under the Contract Documents have been met, the Owner shall make payment on or before the 25th day of each month, as follows: Ninety-five percent (95%) of the value of the Work completed up to the first day of the month, as approved by the Architect and the Owner including the value of materials suitably stored at the Project site (or other approved location in accordance with Section 9.3.2) less the aggregate of previous payments.

§ 9.6.2 Reduction of retention shall not be considered until receipt of the Project Record Documents detailed in Section 01720 of the specifications.

§ 9.6.3 The Contractor shall pay each Subcontractor, no later than (3) working days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.5 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.6 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any authority having jurisdiction thereof necessary for the beneficial occupancy of the Project. The term "Substantial Completion is further defined at Division 1 Section 01011 of the Project Manual.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete in accordance with Subparagraph 9.8.1, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be corrected. The Contractor shall proceed promptly to complete and correct items on the list before the Architect/Owner will generate their punch-list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents the Architect will notify the Contractor in writing generally stating the reasons it will not certify Substantial Completion. The Contractor shall within fourteen (14) days of receipt of the letter (or within such shorter time period as the Project Manual's Division 1 General Requirements may prescribe), complete or correct such items.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. The Contractor

shall, within 60 days of receipt of the Architect's list of items, complete all items of listed Work and additions thereto, unless otherwise agreed to in the Certificate of Substantial Completion. If the Contractor fails to complete all listed Work within the time allotted, the Owner may terminate the Contract pursuant to Paragraph 14.2. If the Contractor fails to complete all listed Work within the time allotted, and the Owner allows the Contractor to complete the Work beyond the 60-day period, all regular progress payments will be suspended until such Work is complete as certified by the Architect. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. If the Owner, due to failure of the Contractor, has the listed Work completed by another contractor, the responsibility of the Contractor for the warranties required under the Contract Documents will continue, and the Contractor will obtain for the Owner all requested assurances from the manufacturers and suppliers.

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

§ 9.8.6 Within 30 days of the issuance of the Certificate of Substantial Completion, the Contractor shall submit the final Project Record Documents to the Architect for approval as specified in the Contract Documents. Failure to make this submission within the stipulated time period shall result in the suspension of all regular progress payments until the documents are received and approved by the Architect.

§ 9.9 PARTIAL OCCUPANCY OR USE

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

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect in form and substance satisfactory to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the

Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner and (6) all other conditions precedent in accordance with the Contract Documents are fulfilled. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. The final payment of the Contractor shall not become due until all final Project record documents as required by the Contract Documents have been received and accepted by the Architect.

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

- .1 claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor, or Sub-subcontractor, or an equipment or material supplier shall constitute a waiver of claims by that payee.

(Paragraphs deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

Students or other school personnel, as well as the general public, may be on the project site and in the immediate vicinity of the Work indicated. The Contractor shall provide suitable barriers, warning signs and devices and take other protective measures that may be required to protect students, other persons, and vehicles in the vicinity of Work. It shall be the Contractor's responsibility to stop any operations immediately which could be considered as dangerous to any person in the vicinity of the Contractor's operations at the site. The Contractor shall immediately advise the Owner and the Architect of the situation which caused the Work to be stopped so that administrative steps can be taken by the Owner to prevent reoccurrence of the situation. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Where construction is undertaken in an occupied facility, the Contractor will be required to issue identification badges to each employee, Subcontractor, Sub-subcontractor and/or material supplier or any other person visiting the construction site on a daily basis. The identification badges shall be numbered with at least a 48pt. type for easy identification. A log of persons and identification numbers will be kept in the Contractor's construction trailer at all times. Such badges will be collected at the end of each workday.

§ 10.2.10 No firearms of any kind including those that may be locked in a vehicle are permitted on Owner's properties.

§ 10.2.11 There will be no smoking on Owner's properties.

§ 10.2.12 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop any ongoing Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. The Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. If the presence of the material or substance is verified, when the material or substance has been rendered harmless, Work in the affected area shall resume as directed by the Owner.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or

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death as described in Section 10.3.1 and has not been rendered harmless, provided that such damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or sole negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site by unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

(Paragraphs deleted)

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Under no circumstances shall Contractor be entitled to additional compensation or an extension of time if the emergency was caused by Contractor, its Subcontractors or others for whom Contractor is responsible.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 For the duration of the Agreement, the Contractor shall purchase from and maintain insurance with a company or companies lawfully authorized to do business within the State of Maryland. Written certification of this requirement shall be presented to Owner through the Architect. Insurers must have at least an A-X rating with A.M. Best. No acceptance and/or approval of any insurance by the Owner shall be construed as relieving or excusing Contractor, or Surety, or its bonds, from any liability or obligation imposed upon any or all of them by the provisions of the Contract Documents. Such insurance shall protect the Contractor and the Owner from claims set forth below which may arise out of or result from the Contractor's operations under the Agreement, whether on-site or off-site, and for which the Contractor may be legally liable, whether such operations are by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefits and other similar employee benefit acts including private entities performing Work at the site and exempt from the coverage on account of the number or employees or occupation, which entities shall maintain voluntary compensation coverage pursuant to the statutory requirements of the State of Maryland for the duration of the Project;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by Contract Documents to provide the insurance which entities shall maintain Employers' Liability coverage at the specified limits for the duration of the Project;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by personal injury liability coverage including libel, slander, false arrest, wrongful detention and malicious prosecution, which are sustained (1) by any person as the result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person for whose acts the Contractor may be liable;

- .5 claims for damages, other than to the Work itself, because of physical injury to or destruction of tangible property, including loss of use resulting therefrom;

(Paragraph deleted)

- .6 claims for bodily injury or property damage arising out of completed operations for which coverage will be maintained for two (2) years after final payment and acceptance of the Project. Coverage will apply to the goods, products, materials, or equipment used or installed under the Contract;
- .7 claims involving contractual liability insurance applicable to meet, to the fullest extent possible, Contractor's obligations under Section 3.18; and
- .8 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any owned, hired, or non-owned motor vehicle

(Paragraph deleted)

§ 11.1.3 Notice to Proceed will not be issued and the Contractor will not be authorized to commence Work until Contractor has obtained all of the minimum amounts of insurance required by this Article 11 and such insurance has been approved by the Owner. The Contractor shall not allow any Subcontractor or Sub-subcontractor to commence work on Subcontracts or Sub-subcontracts until the same insurances have been obtained by the Contractor for all Subcontractors and/or Sub-subcontractors and are approved by the Owner. The Contractor shall obtain from each Subcontractor and Sub-subcontractor and file with the Owner, through the Architect, duly executed certificates of all required insurance. All policies shall be written in the name of the Contractor with the Owner added as an additional insured. If required by the Owner, the Contractor shall furnish the Owner with certified copies of each policy required by him, his Subcontractor or Sub-subcontractors.

§ 11.1.4 The Contractor shall neither cause any insurance to be canceled nor permit any insurance to lapse during the execution of the Work. Coverages, excepting completed operations, shall be maintained without interruption from date of commencement of the Work until date of final payment and acceptance of the Project. Completed Operations coverage will be maintained for 2 years thereafter. All insurance policies required hereunder shall include the following provisions: "It is agreed that this policy is not subject to cancellation, non-renewal, non-payment of premium, material change or reduction in coverage until 30 calendar days prior written notice (as evidenced by return of registered or certified letter) has been given to the Owner." Certificates of Insurance shall contain information identifying the locations and operations for which the insurance applies, the expiration date, and the above-mentioned notice of cancellation or modification clause.

§ 11.1.5 If the Owner is damaged by the failure of the Contractor, or its Subcontractors, to maintain the specified insurance or to notify the Owner, then the Contractor shall bear all costs attributable thereto.

§ 11.1.6 In the event the Contractor fails to maintain any insurance required under the Contract Documents, the Owner may, but shall not be obligated to, purchase and maintain such insurance on the Contractors behalf and shall be reimbursed by the Contractor for the cost thereof in the manner provided for in Section 2.4.

§ 11.1.7 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection, or engineering services exclusion that would preclude liability coverage for the Owner due to supervision and/or inspection of the Project.

§ 11.1.8 Waivers of Subrogation.

The Contractor and its insurance companies waive all rights against (1) the Owner and the Owner's agents and employees and (2) the Architect and the Architect's consultants for any claims, suits, losses or damages covered by any policies which are required to be purchased and maintained under the insurance provisions of the Contract Documents. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the Owner. All policies shall provide such 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 had an insurable interest in the property damaged, and the waiver of subrogation shall apply only to the extent of actual payment of insurance proceeds.

§ 11.2 OWNER'S LIABILITY INSURANCE [INTENTIONALLY OMITTED]

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 If the Owner requests in writing that insurance for risks other than those described in the Contract Documents, i.e. earthquake, flood, pollution or any other difference in conditions coverages, the Contractor shall, if possible, include such insurance, and the cost thereof shall be charged to the Owner by appropriate Change Order.

(Paragraphs deleted)

§ 11.3.2 Before an exposure to loss may occur, the Contractor shall file with the Owner Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. All insurance policies required hereunder shall include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, non-payment of premium, material change or reduction in coverage until 30 calendar days prior written notice (as evidenced by return of registered or certified letter) had been given to the Owner." Certificates of Insurance shall contain information identifying the locations and operations for which the insurance applies, the expiration date, and the above-mentioned notice of cancellation or modification clause. The Contractor shall not allow any Subcontractor or Sub-subcontractor to commence work on Subcontracts and/or Sub-subcontracts until the same insurances have been obtained by the Contractor for all Subcontractors and/or Sub-subcontractors and are approved by the Owner. The Contractor shall obtain from each Subcontractor and Sub-subcontractor and file with the Owner, through the Architect, duly executed certificates of all required insurance.

§ 11.3.3 Waivers of Subrogation. The Contractor and its respective insurance companies waive all rights against (1) the Owner and the Owner's agents and employees and (2) the Architect and Architect's consultants for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the Owner. All policies shall provide such waivers of subrogation by endorsement or an otherwise acceptable form. 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 had an insurable interest in the property damaged, and the waiver of subrogation shall apply only to the extent of actual payment of insurance proceeds.

§ 11.3.4 NOT USED

§ 11.3.5 NOT USED

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 In accordance with the Contract Documents, the Contractor shall furnish Payment and Performance bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Both bonds shall be submitted in the form set forth in Section 00601, Division O, of the Project Manual in the amount of one hundred percent (100%) of the Contract amount, shall name the Owner [and the Washington Suburban Sanitary Commission] as Obligees and shall (1) be issued by firms licensed to write bonds in the State of Maryland having at least an A minus rating with A.M. Best; (2) bind the Surety to the Obligees for the performance of all Work in accordance with the Contract Documents; and (3) defend, indemnify and hold harmless the Obligees from claims, demands, liens, or suits by any person or entity whose claim, demands, lien or suit is for the payment of labor materials or equipment furnished for use in the performance of the Work. All bonds shall be executed by a duly appointed attorney in fact and will have a "live" Power of Attorney bearing the seal of the Surety thereon. Unless otherwise set forth in the Contract Documents the Contractor shall pay premiums for required bonds. Obtaining of bonds by the Contractor shall be a condition precedent to commencement of the Work. If additional Work is performed, the amounts of the bonds shall automatically increase to cover the value of the additional work.

§ 11.4.2 In accordance with the Contract Documents, any bonded Subcontractor identified in whose Contract exceeds \$100,000 in value shall provide the Contractor Payment and Performance bonds in the amount of one hundred percent (100%) of the Subcontract amount and shall name the Contractor and Owner as Obligees. Payment and Performance bonds submitted by the Subcontractor shall be submitted on AIA Document A312, and shall (1) be issued by companies licensed to write bonds in the State of Maryland having at least an A Minus rating with A.M. Best; (2) bind

the Surety to the Obligees for the performance of all Work in accordance with the Contract Documents and (3) defend, indemnify and hold harmless the Obligees from claims, demands, liens, or suits by any person or entity whose claim, demands, lien or suit is for the payment of labor materials or equipment furnished for use in the performance of the Work. All Subcontractor bonds shall be executed by a duly appointed attorney in fact and will have a "live" Power of Attorney bearing the seal of the Surety thereon. Unless otherwise set forth in the Contract Documents the Subcontractor shall pay premiums for required bonds. Obtaining of bonds by the Subcontractor shall be a condition precedent to commencement of the Subcontractor Work. If additional Work is performed the amounts of the bonds shall automatically increase to cover the value of the additional Work. The site work Subcontractor shall name the Washington Suburban Sanitary Commission as their interest appears, as an obligee on its bond. The Contractor shall submit copies of all required Subcontractor bonds to the Owner prior to allowing the Subcontractor to commence Work.

§ 11.4.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.4 The Contractor and Sureties acknowledge that the Performance Bond includes such performance as may be required of the Contractor by the Owner and Architect during the various guaranty and warranty periods set forth in the Contract Documents.

§ 11.4.5 The Contractor shall furnish a separate maintenance bond naming the Owner and the Washington Suburban Sanitary Commission as additional insureds which shall be provided to cover a period of one year dating from the time of substantial completion of the off-site sanitary sewer and water system (when applicable) and/or the water service connection. The bond shall be in the amount equal to 50 percent of the value of the off-site water system and/or water service connection work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered which is not contrary to requirements specifically expressed in the Contract Documents and that the Architect has not specifically requested to examine prior to its being covered, the Architect and the Owner may, in writing, request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs of uncovering, correction and replacement shall be at the Contractor's expense.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or Owner failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such Work, including additional testing and inspections, the cost of uncovering and replacement and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. The warranty period for the designated Work does not begin until correction has been completed in accordance with the Contract Documents.

§ 12.2.1.2 Defective Work shall include work that may be caused by deterioration or failure to perform due to premature wear (not caused by abuse), inherent defects in materials, workmanship of manufacturer or fabrication, or improper execution of the Work.

§ 12.2.1.3 The cost of correcting such rejected work also includes all contingent damages arising therefrom, including damage to other Work (whether or not installed by the Contractor) and to other property of the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor, at Contractor's expense, shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may 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 the Contractor, including compensation for the Architect's service 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 the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract.

(Paragraph deleted)

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.1.2 Maryland law requires that any person/contractor who enters into a contract with a public or non-public school "may not knowingly employ an individual to work at a school if the individual is a registered sex offender." An employer who violates this requirement may be found guilty of a misdemeanor and if convicted may be subject to up to five years in prison and/or a \$5,000.00 fine. Contractors are reminded of their legal obligation in hiring their work force for school projects, including direct employees, sub-consultants, subcontractors, and independent contractors. Pertinent excerpts of the new law can be found in Section 00710.

§ 13.1.3.4 Effective July 1, 2015, Maryland law requires that any contractor/subcontractor "that will have direct, unsupervised, and uncontrolled access to children" in a public school" to obtain a national and State criminal history

records check in accordance with MD Code, Family Law, Title 5, Subtitle 5, Part VI. A person who violates this requirement may be found guilty of a misdemeanor and if convicted may be subject to up to one year in prison or a \$1,000.00 fine. Contractors are reminded of their legal obligation in hiring their work force for school projects, including direct employees, sub-consultants, subcontractors, and independent contractors. Pertinent excerpts of the new law can be found in Section 00710.

§ 13.1.4 Contractors convicted of violating these Maryland laws will be barred from future MCPS contracts.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Contractor respectively binds itself, its partners, successors, assigns and legal representatives to the Owner and to successors, assigns and legal representatives of the Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Except as otherwise provided in the Contract Documents, the Contractor shall not assign the Contract as a whole without written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraph deleted)

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

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

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

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

(Paragraphs deleted)

§ 13.7 NOT USED

§ 13.8 EQUAL OPPORTUNITY

§ 13.8.1 The Contractor shall maintain policies of employment as follows:

1. The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, ancestry, national origin, age, marital status, or physical or mental handicap unrelated in nature and extent as to reasonably preclude the performance of the employment. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, ancestry or national origin, age, marital status, or physical or mental handicap unrelated to job performance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and for employment, notices setting forth the policies of non-discrimination.
2. The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that "All qualified applicants will receive consideration for employment without regard to race, religion, color, sex, ancestry or national origin, age, marital status, or physical or mental handicap unrelated in nature and extent so as to reasonably preclude the performance of the employment."

§ 13.9 BUY AMERICAN STEEL

§ 13.9.1 The Contractor shall comply with provisions of the State Finance and Procurement Article of the Maryland Annotated Code, Sections 17-301 through 17-306, inclusive, known as the "Maryland Buy American Steel" Act of the General Assembly of Maryland.

§ 13.9.2 Wherever in the Contract, "steel products," as hereinafter defined, are part of the supplies, services, or construction required by the Owner, for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works, the Contract Sum shall be based solely upon "steel products" manufactured in the United States of America or one of its territories, continental or insular, subject to the jurisdiction of the United States in sufficient quantities to meet the requirement of this Contract.

§ 13.9.3 The "Buy American Steel" Act of Maryland defines "steel products" as any product "rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process."

§ 13.10 LIMITATION OF LIABILITY

The Owner shall be liable only to the extent of the Owner's interest in the Project. No officer, director, employee, or agent of the Owner shall ever be personally or individually liable with respect to the Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner should succeed to the Contractor's rights and obligations under a Subcontract.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 all conditions precedent for payment under the Contract Documents have been met by Contractor and the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Sections 9.4.1 and the Owner has not made payment within the time stated in the Contract Documents.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

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

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 fails to maintain progress in accordance with the Contractor's Construction Schedule as defined in Section 3.10.

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

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- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

Notwithstanding the preceding sentences in this section, in the event Owner determines in its reasonable discretion that (i) Contractor has failed to maintain progress in accordance with the Contractor's Construction Schedule as set forth in Section 14.2.1.5 above and (ii) terminating the Contract is necessary or advisable to achieve timely Substantial Completion, Owner may terminate the Contract without need of certification from the Initial Decision Maker. Additionally, if the total Contract Time set forth in the Agreement (as may be adjusted only by fully executed Change Order) is 180 days or less, the seven day written notice period set forth above in this Section 14.2.2 shall be reduced to three days.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. The Surety shall not, without the written consent of the Owner, retain the Contractor for the completion of the Work and the Contractor shall not, without written consent of the Owner, perform any of the Work.

§ 14.2.4 The Contractor and Surety shall be responsible for all costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner. If such costs and damages exceed any unpaid Contract balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause and for no reason or any reason (including lack of appropriated funds sufficient to cover the balance of payment for Work not yet performed), order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. 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 the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered, and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits.

§ 14.4.4 The Owner shall be credited for (1) payments previously made to the Contractor (2) claims which the Owner has against the Contractor under the Contract, and (3) the value of materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. The Owner may, at its option, also require that the Contractor assign the balance of the Contract to another contractor of the Owner's choosing. If the Contractor fails or refuses to execute any documents necessary to effectuate such assignment, the Owner may execute such documents on behalf of the Contractor.

§ 14.4.5 Upon determination by a court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 14.2 was wrongful or otherwise improper, such termination shall be deemed to be a termination for convenience pursuant to Section 14.4 and the provisions of Section 14.4.3 shall apply.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjust or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. All contractor Claims will be supported by clear and convincing evidence. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Strict compliance by the Contractor with all provisions set forth in Section 15.1 is a condition precedent of Contractor's right to have a claim.

§ 15.1.2 TIME LIMITS ON CLAIMS

Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or such Claim shall be finally and completely waived for all purposes, and the Contractor shall thereafter be barred from pursuing litigation. Claims by the Contractor must be initiated by written notice to the Architect and the Owner.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

The Contractor shall make no claims for any concealed or subsurface conditions, nor shall it be entitled to any increase in the Contract Sum for any such conditions, with the sole and exclusive exception of conditions which (i) with respect to subsurface conditions, are of a highly unusual nature and type for the geographic area where the Project is located; (ii) with respect to concealed conditions within existing structures, are of a highly unusual nature and type for the constructed improvement concealing same; (iii) could not have been reasonably inferred from the Contract Documents; and (iv) Contractor neither knew of nor had reason to know of the conditions prior to the date the Contract was made. With respect to any conditions which fall within this exclusive and limited exception, written notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than 48 hours after the conditions were first observed. The Architect will promptly investigate such conditions and, if they differ materially as described above and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not so materially different and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons, and such determination of no change shall be binding upon Owner and Contractor. Claims by Contractor in

opposition to any recommendation of an adjustment of the Contract Sum or Contract Time must be made within 21 days after the Architect has given its recommendation, and shall be subject to further proceedings pursuant to Paragraph 15.2. Strict compliance by the Contractor with the procedures set forth in this subsection 15.1.4 is condition precedent of Contractor's right to make a claim for concealed or unknown conditions.

§ 15.1.5 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work or such claim shall be finally and completely waived for all purposes and the Contractor shall thereafter be barred from pursuing litigation. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.1 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 15.1.5.2 If the Contractor believes additional cost is due to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1.

§ 15.1.6 CLAIMS FOR ADDITIONAL TIME

§ 15.1.6.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path. Any claims for extension of Contract Time based on delays caused by abnormal weather shall be substantiated by the following:

- .1 Record of "normal weather conditions" established from historical weather data determined from climatological data sheets obtained from (U.S. Department of Commerce) National Weather Service Station for locality closest to project site for a five-year period preceding the date of the Contract. The Contractor shall provide the Monthly NOAA data sheets, which indicate daily weather data. The annual summary data sheets, which do not include daily weather data, are not acceptable.
- .2 Weather data from National Weather Service for the time period cited in the claim for extension.
- .3 Copy of Superintendent's daily report for the time period cited in the claim for extension.
- .4 Copy of the Contractor's Construction Schedule indicating critical major sequence of Work.
- .5 The Contractor agrees that it shall not be entitled to a time extension for normal inclement weather which can be expected at the Project locale due to precipitation or temperature, based upon actual data from the U. S. Department of Commerce, National Weather Service/National Oceanic and Atmospheric Administration (NOAA) for the locality closest to the Project site for a five-year period preceding the date of the Contract. The Contractor acknowledges and warrants that in making its proposal or bid and Construction Schedule for the Work, it gave due care and consideration to this expected number of calendar days of inclement weather for the locale of the Project and allowed for the impact of inclement weather on subsequent work. During the time of performance, should the expected number of calendar days of inclement weather for the locale of the Project be less than originally anticipated by the Contractor, those days not so affected by inclement weather shall be considered float-time in the Construction Schedule.

- .6 The Contractor agrees that the measure of abnormal inclement weather due to precipitation or temperature during the period covered by this Contract shall be the number of days in excess of those shown in the weather data referenced in Section 15.1.6.2 hereof, in which precipitation exceeds .10 inches (or in the case of snow of ice pellets, 1 inch or more), or in which the highest temperature was 32 degrees Fahrenheit or below or the lowest temperature was 95 degrees Fahrenheit or above.
- .7 Extensions of time will be made only for days in which abnormal inclement weather criteria cited in 15.1.6.2.6 occur.
- .8 If the total calendar days lost due to inclement weather, from the start of the Work at the Project site by the Contractor until the principal portions of the Work are enclosed, exceeds the total number of days to be expected to be lost for the same time period, a time extension, if granted, shall only be the number of calendar days needed to equal the excess number of calendar days lost to such abnormal inclement weather. Time extensions from weather delays do not entitle the Contractor to "extended overhead" recovery.
- .9 Submit claims for additional time related to inclement weather of the Specifications in order to maintain schedule. The Architect will determine (and only after receipt from the Contractor, in writing, that a claim will be made for the day (s) in question) whether or not inclement weather caused loss of a workday. Said determination shall prevail should a dispute arise due to differing conditions between the Project site weather and the NWS/NOAA weather service station identified in Section 15.1.6.1.
- .10 Notwithstanding any other provision of the Contract, the Contractor agrees that its right to receive an extension of time shall be the Contractor's sole and exclusive remedy with regard to any delays or interference with the Contractor's schedule for completion of the Work, and the Contractor hereby waives any and all claims, for the monetary damages arising out of or related to any such delay or interference, including, but not limited to, claims for delay damages, interference damages, impact damages, acceleration damages, and any other form of time-related damages.

§ 15.1.6.3 In the case of a Claim alleging delay, the Contractor shall state the precise number of days of delay claimed, the impact of the delay on any aspect of the Work and shall support the Claim by a competently prepared schedule based analysis. If the Architect finds that the Contractor has been delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation, or by other causes which the Architect determines may justify delay, then the Architect shall state, in the alternative, for the Owner's consideration, the appropriate increase to the Contract Time and/or the Contract Sum based on the Contractor's claim to cover only premium labor rates for overtime and fringe benefits required to overcome the effect of such delay. The Contractor shall have no right to claim and the Architect shall have no authority to award damages for additional general conditions, overhead, extended overhead, or home office overhead costs. All claims made by the Contractor, or by any Subcontractor of any tier through the Contractor, shall be accompanied by a certification by an officer of the Contractor having overall responsibility for the Contractor's affairs stating (1) the claim is made in good faith, (2) after diligent analyses by the Contractor the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and (3) the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. For Subcontractor claims the Contractor may not rely on Subcontractor certifications but must conduct an independent evaluation sufficient to certify the claim as stated above. False or inaccurate certification of a claim will entitle the Owner to recover its costs of defending such claim including but not limited to attorney, accountant and expert fees and associated costs.

§ 15.1.7 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives all Claims for consequential damages arising out of or relating to this Contract including:

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

This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.2.1 DECISION OF ARCHITECT Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 or 10.4 or out of workmanship errors or other construction defects discovered after Substantial Completion, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to litigation of all Claims between the Contractor and Owner unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

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

§ 15.2.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

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

§ 15.2.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to litigation.

(Paragraphs deleted)

§ 15.2.6 When a written decision of the Architect states that (1) the decision is final but subject to litigation and (2) that litigation over the subject matter of the Claim covered by such decision must be filed within six months after the date on which the party filing suit receives the final written decision, then failure to file suit within said six-month period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor, and any right to file suit thereafter shall be waived. If the Architect renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede litigation unless the decision is acceptable to all parties concerned.

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

(Paragraphs deleted)

§ 15.4 LITIGATION

§ 15.4.1 Any claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 15.1.2, 15.1.4, 15.1.5, 15.1.6, 15.1.7, 9.10.3 and 9.10.4 shall, after decision by the Architect or 30 days after submission of the Claim to the Architect without a decision having been rendered, be subject to litigation in Circuit Court in Montgomery County, Maryland, and the Contractor waives jurisdiction or venue in any other court or tribunal.

(Paragraphs deleted)

§ 15.4.2 Suit shall be filed within the time limits and in the venue specified in Sections 15.2.6 and 15.4.1 as applicable, or the Architect's decision shall become final and estopped from pursuing litigation.

§ 15.4.3 LIMITATION ON CONSOLIDATION OR JOINDER

No litigation arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No litigation shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in litigation. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to litigation whose interest or responsibility is insubstantial. Consent to litigation involving an additional person or entity shall not constitute consent to litigation of a claim not described therein or with a person or entity not named or described therein. The foregoing agreement to litigate and other agreements to litigate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in the Circuit Court of Montgomery County.

§ 15.4.3.1 CLAIMS AND TIMELY ASSERTION OF CLAIMS

The party filing litigation may assert in the case only the Claim which was filed with and decided by the Architect, and the Court shall have no jurisdiction to consider any amendment, modification or supplementation to that Claim.

(Paragraph deleted)