

# DRAFT AIA® Document A101™ – 2017

## ***Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum***

AGREEMENT made as of the [ ] day of [ ] in the year 2024.

BETWEEN the Owner:

**CHERRY CREEK SCHOOL DISTRICT NO. 5  
4700 S Yosemite Street  
Greenwood Village, Colorado 80111**

and the Contractor:

[ ]

for the following Project:

and the Architect:

The Owner and Contractor agree as follows.

### **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.

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

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and **AIA Document A201-2017 General Conditions of the Contract for Construction**, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of \_\_\_\_\_, 2024.

Contractor understands and agrees that the Owner shall not be liable for payment of work or services nor for costs or expenses incurred by the Contractor prior to the proper execution and Owner approval of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[ ☐ ] Not later than ☐ ( ☐ ) calendar days from the date of commencement of the Work.

[ ☒ ] By the following date: \_\_\_\_\_, 2024

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **dollars and zero cents (\$0.00)**, subject to additions and deductions as provided in the Contract Documents. **The Contractor shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of this Agreement, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the Owner harmless for all claims arising under such taxes and fees.**

§ 4.2 Intentionally deleted.

§ 4.3 Allowances, if any, included in the Contract Sum:

Item	Price

§ 4.4 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.5 Liquidated Damages: The Contractor understands and agrees that the completion of the entire Project within the time specified is an essential feature of this Agreement and that the Owner will sustain substantial damages, the amount of which is not possible to accurately determine at the time of contracting and which may be difficult to prove, if the Work is not so completed. The Contractor, therefore, agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to ensure the substantial completion of the Work within the prescribed time. The Contractor further agrees that its failure to substantially complete the Work within the time allowed shall be considered a material breach of this Agreement and shall entitle the Owner to collect liquidated damages for the delay in completion in accordance with the General Conditions in the sum of five-hundred dollars and zero cents (\$500.00) for each calendar day, if any, which elapses between the date stated in the Agreement, as extended by any extensions of time under the provisions of the General Conditions, and the date of substantial completion. If the Contractor fails to pay such liquidated damages promptly upon demand therefor, the surety on the Contractor's performance bond shall pay such damages. Also, the Owner may withhold all or any part of such liquidated damages from any payment due the Contractor. No changes in the Work shall extend the time for completion or the contract schedule unless set forth in a properly approved Change Order.

§ 4.6 Other:

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

§ 4.7 Notwithstanding anything to the contrary in this Agreement or the General Conditions, Contractor acknowledges that Owner is a public, tax exempt entity and Contractor shall work with Owner to avoid the payment of taxes when possible.

#### ARTICLE 5 PAYMENTS

##### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 5.1.3 Payment terms are Net 30. The Owner shall make payment of the amount certified by the Architect to the Contractor. Contractor agrees the Owner, at its sole discretion, may make payment via check, ACH, or by District credit card. Payments will be made no more frequently than once in a 30-day period with the exception of District credit card purchases. For supplies, partial payments for partial shipments will not be made unless specifically authorized herein. Payment will be made when all supplies or services have been received and accepted. All supplies on a single order should be shipped together and complete. In the unlikely event of a late payment, the Owner will not pay late or interest charges.**

**§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.**

**§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.**

**§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:**

**§ 5.1.6.1 The amount of each progress payment shall first include:**

- .1 That portion of the Contract Sum properly allocable to completed Work;**
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and**
- .3 That portion of Construction Change Directives that the Architect determines, in consultation with Owner, to be reasonably justified.**

**§ 5.1.6.2 The amount of each progress payment shall then be reduced by:**

- .1 The aggregate of any amounts previously paid by the Owner;**
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;**
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;**
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and**
- .5 Retainage withheld pursuant to Section 5.1.7.**

#### **§ 5.1.7 Retainage**

**For each progress payment made prior to the Date of Final Completion of all Work, the Owner may withhold five percent (5%) as retainage from the payment otherwise due. On satisfactory completion and final acceptance at the discretion of the Owner, payment shall be made in full, including retained percentages, less deductions as determined by the Owner.**

**§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.**

**§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.**

#### **§ 5.2 Final Payment**

**§ 5.2.1 Final Payment shall be made by the Owner to the Contractor upon Final Completion of the Work, which shall occur when:**



- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect **and approved by Owner**;
- .3 **Contractor has delivered to Owner a certificate evidencing that Contractor's insurance will remain in effect for the applicable warranty period after Substantial Completion;**
- .4 **all notes, memoranda, photographs, spreadsheets, record drawings, as-built drawings, data, designs or plans required by the Contract Documents (collectively "Work Product"), have been delivered to the Owner;**
- .5 **Owner has received all warranties and all maintenance and instruction manuals;**
- .6 **Contractor has delivered to Owner a final list of subcontractors;**
- .7 **Owner has received all written certifications required by the Contract Documents;**
- .8 **Owner has received all affidavits of debt payments, all proofs of insurance, all consents of surety, and all lien releases;**
- .9 **Owner has complied with C.R.S. § 38-26-107;**
- .10 **Contractor submits the items set forth in Section 9.10.2 of the General Conditions.**

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than **45 days after the date of Final Completion of the Work.**

§ 5.3 Intentionally deleted.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

### § 6.2 Binding Dispute Resolution

**In the event that any dispute between the parties arises out of this Agreement, the parties shall meet and confer in a good faith effort to resolve such dispute. In the event such efforts do not resolve the dispute within fifteen (15) days from the date the dispute arises, the Owner may elect to submit the dispute to mediation before the Judicial Arbitrator Group or other independent mediation service in Colorado. This provision shall survive termination of this Agreement. This provision shall not be considered an election of remedies. The Owner may elect to pursue litigation for any dispute arising under this Agreement at any time.**

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor **a reasonable fee earned for Work successfully completed through the date of termination. Contractor shall not be entitled to any anticipated profit or damages for loss of opportunity as a result of Owner's termination for convenience.**

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

§ 7.3 Force Majeure. **Should events beyond the reasonable control of the Owner and Contractor, including but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, epidemics, pandemics, including COVID-19, plagues, outbreaks of infectious disease or any other public health crisis, including quarantine, stay at home orders or the like, or other employee restrictions, or any other cause reasonably beyond the parties' control (collectively referred to as "events"), making the terms impracticable, impracticable to perform, illegal or impossible to fully perform under this Agreement as the Parties originally contracted, the affected party may terminate this Agreement, without liability, upon written notification. Definition of "without liability": "Without liability" means that there will be no liquidated damages, attrition fees, cancellation fees, rental charges, rental deposits, service charges, or any direct, consequential, compensatory, special incidental damages or any other damages or amounts of any nature whatsoever.**

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

David Henderson, Director Chief of Operations  
Cherry Creek School District No. 5  
9301 E Union Avenue  
Greenwood Village, Colorado 80111

§ 8.3 The Contractor's representative:

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

### § 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document 201-2017, General Conditions of Contract for Construction, including Labor and Material Payment and Performance Bonds satisfactory to Owner.

§ 8.5.2 Contractor agrees to obtain and maintain during the performance of the work and until acceptance by the Owner the following described insurance naming the Owner as additional insured on the insurance described in sections (B) and (C). Such insurance shall be primary to any insurance carried by Owner and shall be carried with insurance companies satisfactory to Owner. Contractor will provide Owner certificates of insurance prior to the start of the work evidencing the required insurance.

The required insurance coverage is as follows:

- A. Workers Compensation with statutory limits, as required under the laws of the State of Colorado and Employer's Liability of not less than \$500,000.
- B. Commercial General Liability Insurance including premises/operations, personal injury, products/completed operations and contractual liability coverage's with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.
- C. Commercial Automobile Liability covering all automobiles, owned, hired and non-owned vehicles used in the performance of this contract with limits of no less than \$1,000,000 per occurrence, \$2,000,000 aggregate.
- D. Certificate(s) of Insurance, per Article 10 Section 10.1, shall name Cherry Creek School District No. 5 as Additional Insured.

§ 8.5.3 Builder's Risk: The Contractor shall obtain and maintain Builder's Risk Insurance for the completed value of the project on a replacement cost basis for equipment, materials and property of every kind and description that is supplied and intended to become a permanent part of the building or structure, during the course of construction and prior to full acceptance thereof by the Owner. The Builder's Risk coverage shall be written to include theft, malicious mischief, collapse, false-work, transit, debris removal and increased cost of construction. Equipment Breakdown Coverage (a.k.a. boiler and machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including hot testing, where applicable). The Builder's Risk Policy shall specifically permit occupancy of the building during construction. All deductibles shall be assumed by the Contractor. The Owner will be name as an additional insured for the work performed under this contract. The Builder's Risk Policy will be made available for the Owner for inspection. All losses, if any, shall be payable to the Owner and Contractor as their interests may appear.

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
1) Insurance	Reference Article 8, Section 8.5
2) Bonds: Payment & Performance	100% of Contract Sum

**§ 8.6 Intentionally deleted.**

**§ 8.7 Other provisions:**

**§ 8.7.1 The Contractor is responsible for securing and paying for all State Stormwater Management Permits and / or local Stormwater Management Permits required for the project. The Contractor is also responsible to ensure that all the requirements of any such Stormwater Management Permits are strictly followed during and to the extent applicable, after construction. The Contractor shall review, become familiar with, and follow the Owners Construction and Post-Construction Site Stormwater Runoff Control Programs and timely complete all required inspections and file with the Owner / Consultant all required inspection reports.**

**The Owner may engage a civil engineer to prepare an erosion control plan as part of the overall contract documents. The Contractor can use or modify the contract document plan as necessary in their preparation of the Stormwater Management Permit application. However, this does not relieve the Contractor from preparing their own site specific plan for application submission if no plan is provided in the contract documents.**

**The Owner, or designated Owner's representative, may inspect the Stormwater Management plan, project site and BMPs and communicate noted deficiencies for corrected measures at any time during the construction project. The Contractor shall be fined up to \$250.00 per day in addition to any federal, state, or local fines until deficiencies are corrected. The Contractor shall coordinate all inspections required by the State, or authority, having jurisdiction and the Owner.**

**The Owner's final acceptance of the project and Contractor de-mobilization does not relieve the Contractor of their responsibilities and duties and required in the applicable permits and Owner's programs while it / they are still open. Final acceptance of the ground areas including permanent stormwater structures shall only occur after the required vegetation and stabilization has been established. The Contractor is required to conduct monthly (or more frequent if required by the applicable permits or programs) inspections of the site and BMPs during this warranty period and make corrective changes to the BMPs, or add BMPs, as needed.**

**The Contractor will notify the Owner in writing when they believe all vegetation and stabilization has reached the contract requirements and they want to close the Stormwater Management Permit(s). The Owner must be allowed the opportunity to review the site and approve the Contractors request to close the permit. The Contractor cannot apply to close the Stormwater Management permit without the Owner's written approval. It is the Contractor's responsibility to remove and dispose of all Best Management Practices (BMPs) after the Stormwater Management Permit has been closed.**

**§ 8.7.2 During the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of religion, race, creed, color, sex, sexual orientation, national origin, disability, age or other protected status. The Contractor shall take action to ensure that applicants are employed and that employees are treated during employment without regard to their religion, race, creed, color, sex, sexual orientation, national origin, disability, age or other protected status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.**

**§ 8.7.3 This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.**

**§ 8.7.4 This Agreement contains the entire understanding of the parties and supersedes all prior understandings, agreements, or representations by or between the parties, whether oral or written, that in any way relate to the subject matter of this Agreement. Execution of this Agreement constitutes a**

representation by the Contractor that to the best of the Contractor's knowledge no conflict of interest exists between the Owner representatives and the Contractor or its employees and agents.

§ 8.7.5 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Owner.

§ 8.7.6 Governmental Immunity. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits and protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, afforded to the Owner as a public school district.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, including Exhibit A, proposal dated \_\_\_\_\_ 2024.
- .2 Intentionally deleted.
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 Intentionally deleted.
- .5 Drawings

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ☐ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

<< >>

[ ☐ ] The Sustainability Plan:

Title	Date	Pages

[ ☒ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
007300	Supplementary Conditions	Jan 2023	19

.9 Other documents, if any, listed below:

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

OWNER (Signature)

Kelly Bates, President  
Board of Education  
Cherry Creek School District

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:



THE OWNER:

CHERRY CREEK SCHOOL DISTRICT NO. 5  
4700 S Yosemite Street  
Greenwood Village, Colorado 80111

THE CONTRACTOR:

THE ARCHITECT:



### 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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, *Guide for Supplementary Conditions*.

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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 or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (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, 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 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 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 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.

### **§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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.

### § 1.3 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. **In the case of discrepancy or in the event of a conflict between or among the different Contract Documents, the documents shall take precedence in the following order:**

- .1 **Change Orders;**
- .2 **Written Amendments to the Agreement;**
- .3 **Agreement;**
- .4 **Conditions of the Contract;**
- .5 **Drawings and specifications; and**
- .6 **Bid Documents, including addenda, if any.**

**Where two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision.**

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Intentionally deleted.

§ 1.8 Intentionally deleted.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner 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 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 stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents and has no duty to notify Contractor of same. By entering into the Contract Documents or any agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

### § 2.2 Evidence of the Owner's Financial Arrangements

Owner represents that, at the time of the execution of the Agreement, the amount of funds appropriated by Owner is equal to or in excess of the Contract Sum. The Owner shall not issue any modification to the Agreement that causes the aggregate amount payable under this Agreement to exceed the amount originally appropriated, unless Owner provides written assurance to Contractor that lawful appropriations to cover the costs of the additional Work have been made and the appropriations are available prior to performance of the additional Work.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 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 approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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. **Other than the metes and bounds noted in the survey, if any, Owner does not guaranty the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence of absence of easements.**

§ 2.3.5 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.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.4 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 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.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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 current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## **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 its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's 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** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** Neither the Owner nor the Contractor is 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 submit 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, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, **which includes proposed change to ensure jobsite safety**, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

§ 3.3.3 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.

### § 3.4 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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

§ 3.5.1 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 these requirements 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, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **Contractor further warrants that it shall perform the Work in a good and workmanlike manner and continuously and diligently in accordance with generally-accepted construction practices. Contractor warrants that all material shall be installed in a true and straight alignment, level and plumb, with uniform patterns, and flush and level jointing of materials.**

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.



### § 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. **The Contractor and all of its Subcontractors shall make application to the State Department of Revenue for certificates of exemption to permit the purchase of building materials for the construction of this Project without payment of sales tax. Prior to the start of construction, the Contractor shall furnish copies of such certificates to the Owner. Such applications and certificates must be on forms provided by the Department of Revenue. Any costs, taxes or fines that are incurred as a result of a failure to comply with the requirements of this Subsection 3.6 shall be paid by the Contractor.**

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 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 appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later **than three (3)** days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological 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.

### § 3.8 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 Contract Sum but not 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 responsibility of the superintendent is to supervise, schedule, coordinate, and manage field operations. The superintendent is not to be used as a tradesman.**

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and 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 how 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 that 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect 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 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.

§ 3.12.10.1 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, 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 an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, **provide the Architect has specified to the Contractor the performance and design criteria that such services must satisfy.** Pursuant to this Section 3.12.10, the Architect will

review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. **The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto.**

### § 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 areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or intentional acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate,

abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 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 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect 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, the Architect will not 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, 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall **endeavor to** include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall **endeavor to** promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's **site visits and** evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of 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, 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 reasonable promptness 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 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 order 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 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness **so as not to delay the Work.**

§ 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 decisions, the Architect will **endeavor to protect the interests of Owner by ensuring the Contractor or Construction Manager adheres to the Construction Documents.**

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

§ 4.2.14 The Architect 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 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 the 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 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** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 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. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## **§ 5.3 Subcontractual Relations**

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 that the Contractor, by these Contract 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 will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## **§ 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

- .1 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; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 **consecutive** days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.



§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

### § 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor **reasonably** incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 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 shall be entitled to reimbursement from the Contractor and Separate Contractors.**

## 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 **not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the requirements indicated in the Contract Documents** may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, 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.

### § 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. 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 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect 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.

§ 7.3.7 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.

§ 7.3.8 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 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 profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a 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.

## § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the **requirements indicated in the Contract Documents** and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## 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.

§ 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.

§ 8.1.5 The date of Final Completion of the Work is the date that the conditions set forth in Section 5.2.1 of

**the Agreement and Section 9.10 of the General Conditions are met.**

## **§ 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 knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

**§ 8.2.4** The Owner shall have the right, without giving the Contractor the right to any extra compensation, at any time when, in the judgment of the Owner, the Work is not proceeding in accordance with the approved progress schedule, to require the Contractor to take such measures or adopt such methods as may be necessary in the Owner's opinion to obtain and maintain satisfactory progress, but the failure of the Owner to demand that the Contractor adopt such measures shall not relieve the Contractor of its obligation to secure the rate of progress necessary to complete the Work within the time required by the Agreement.

## **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

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

## **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.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 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 prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of

requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 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.

§ 9.3.3 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, suppliers, or other persons or entities that 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's **on-site visits** evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed **by the Contractor** for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed **by the Contractor** within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven 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 **completed**. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 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.

§ 9.6.7 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 or provided by 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, create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

#### **§ 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 or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up.

#### **§ 9.8 Substantial Completion**

**Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the entire Project for its intended purpose. Substantial Completion can only occur when all systems are operational and have been tested and passed inspection, all facility inspections have been conducted and passed, all certifications have been posted, all personnel instruction is complete, all finishes are in place, completion of remaining Work will not hamper Owner operations, and the Contractor certifies that it can achieve Final Completion of the Work within thirty (30) days.**

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the 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 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. 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 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 (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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, 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;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 **faulty or defective Work first appearing after Substantial Completion.**

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

## 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, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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**

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, notice of the 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 Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been made by the Owner so that they shall not deteriorate, be damaged or be stolen. The Contractor shall, to the best of its ability, safeguard such materials against burglary, pilferage, fire, vandalism and mischief. The Contractor shall bear sole responsibility (1) for the care and protection of materials and work installed in the building and materials stored on the site for which payment has been made, and (2) for the restoration of damaged work and replacement of damaged or stolen materials, at no additional cost to the Owner.**

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a **qualified person or entity** 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. When the material or substance has been rendered harmless, **the Contractor shall resume** Work in the affected area. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 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 claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or

expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous 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.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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** The Contractor acknowledges that it and its employees, agents, and Subcontractors have the responsibility of being fully informed of the Owner's Management Plan as it relates to the buildings located at the site and shall consult with the Owner about how such Plan addresses known or suspected asbestos-containing material areas within such buildings.

#### **§ 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.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall, within ten (10) days after execution of the Agreement execute, deliver to and file with the Owner, a good and sufficient bond to be approved by the Owner in a penal sum equal to the Contract Sum. Such bond shall be duly executed by a qualified corporate surety, conditioned upon the true and faithful performance of the Agreement, and warranty work, and, in addition, shall provide that if the Contractor or its subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or its subcontractor in performance of the Work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest as provided by law. Performance and payment bonds shall be on forms provided by the Owner and must be issued by qualified sureties as specified herein. The Performance Bond shall additionally guarantee that the Contractor shall remedy any omissions; correct any and all defects; and adjust and make operable all component parts of the work falling under the requirements of this Agreement which may be called to his attention within a period of twelve (12) months following the Date of Final Completion established in the final Certificate for Payment. The expense of all bonds shall be borne by the Contractor. If, at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

**§ 11.1.2** Intentionally deleted.

**§ 11.1.3** Intentionally deleted.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

## **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed 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 must, 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.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected 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.

#### **§ 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 any applicable special warranty required by the Contract Documents, **or within such longer period of time as may be prescribed by law**, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such 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 2.5.

**§ 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.

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

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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

This Contract shall be governed by and construed under Colorado law. Venue for any dispute concerning this Contract shall be exclusively in the federal court located in Colorado or the state court located in Arapahoe County, Colorado.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require, **unless otherwise specified herein.**

§ 13.4.2 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 13.4.1, 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense, **or as specified in the Agreement.**

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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.

§ 13.4.5 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.

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

§ 13.5 Intentionally deleted.

§ 13.6 Any provision in the Contract Documents to the contrary notwithstanding, the obligations of Owner and Contractor, each to the other, under this Agreement, shall survive the termination of this Agreement and shall continue to be binding upon the parties after such termination and until such time as full performance of such obligations shall have been made.

## 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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 **fourteen (14)** days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' 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 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .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.

§ 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.

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

## § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall 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.

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

- .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
- .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 Owner shall pay the Contractor for Work properly executed **in accordance with the requirements of the Contract Documents**; costs incurred by reason of the termination, including **proven** costs attributable to termination of Subcontracts.

## **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, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** 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.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 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 scheduled construction.

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

- .2 damages incurred by 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 mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker 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 Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker 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 the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, 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 Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8 Intentionally deleted.**

### **§ 15.3 Mediation**

Notwithstanding any demand for mediation or arbitration that may be made by the Contractor, and notwithstanding any provision herein, any controversy or claim in any way arising out of or related to the Agreement or the alleged breach thereof shall, if the Owner so elects in its sole discretion, be litigated in a court of competent jurisdiction, rather than mediated or arbitrated as otherwise provided in this Agreement. Nothing in the Contract Documents shall be construed to the effect that the requirements relating to mediation or arbitration shall in any way constitute a prerequisite to any legal or equitable proceeding initiated by the owner in any court of competent jurisdiction.

### **§ 15.4 Arbitration**

In the event that it becomes necessary for either the Owner or Contractor to resolve any controversy or claim arising out of or related to the Agreement through litigation, the prevailing party in such litigation shall be entitled to collect, as part of any judgment entered, its reasonable expert witness and attorney fees and costs.

### **§ 15.5 The Contractor and its subcontractors shall comply with the following Owner prohibitions and obligations:**

**§ 15.5.1 Firearms, explosives, fireworks, shall not be allowed on Owner's Property:** Pursuant to the Gun-Free School Zones Act, (18 U.S.C. §§ 921(a) (25, 26), 922(q) (1), it is unlawful for anyone to knowingly possess firearms in school zones.

**§ 15.5.2 Harassment Policy:** Owner prohibits verbal and/or sexual harassment of students, faculty, personnel and general public on its property. Owner reserves the right to ban offenders of this policy from all Owner premises.

**§ 15.5.3 Sex Offenders:** Pursuant to C.R.S. § 16-22-110, Public's Right to Know of Registered Sex Offenders, Owner reserves the right to investigate the status of any Contractor and/or Subcontractor personnel with respect to Colorado Sex Offender Registry.

**§ 15.5.4 Contractor shall complete a criminal background check on all employees and Subcontractor and Subcontractor's employees who work under the Contract and who will have regular but not incidental contact with, or who will work in immediate proximity to, students on the premises of an Owner's school building. Contractor shall maintain records of such background checks during the term of the Contract. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any unlawful sexual behavior or crime of violence involving a child will not be allowed to work on any Owner school property, with or in immediate proximity to Owner staff or students, or have access to Owner information. Contractor shall provide proof of background checks upon request by the Owner. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.**

**§ 15.5.5 Contractor is obligated to notify all workers, vendors and employees associated with their work on the Project of the above policies and prohibitions. Contractor must conduct a site specific orientation for such persons, as defined below. Any worker, vendor or employee that is engaged in an illegal act, refuses to submit to a search of property or person; or refuses, delays, is uncooperative with, or alters a urine and/or blood analysis shall be immediately removed from Owner property and the Project and shall prohibited from re-entering Owner premises.**

**§ 15.6 The Contractor certifies that it shall comply with the provisions of C.R.S. § 8-17.5-101 *et seq.* The Contractor shall not knowingly (a) employ or contract with an illegal alien to perform Work under the Contract Documents, (b) enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform Work under this Construction Agreement, or (c) enter into a contract with a subcontractor that fails to contain a certification to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Construction Agreement.**

**§ 15.7 In compliance with Colorado Revised Statutes §§ 8-17-101 and 8-17-102, Colorado labor shall be employed to perform at least eighty percent (80%) of the Work. Owner, in Owner's sole discretion after consultation with the State of Colorado, shall have the right to waive the eighty percent requirement if, in the Owner's sole discretion, there is reasonable evidence to demonstrate insufficient Colorado labor to perform**

the Work and if compliance with this Section 40.01 would create an undue burden that would substantially prevent a project from proceeding to completion. Owner shall not impose contractual damages on Contractor for a delay in the Work due to the Owner's decision to exercise this right. The term "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

§ 15.8 In compliance with Colorado Revised Statutes § 8-18-101, if any of the Work includes a contract for commodities or services, preference shall be given to a resident bidder (as defined in Section 15.9) against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

§ 15.9 In compliance with Colorado Revised Statutes §§ 8-19-101 and 8-19-102, preference shall be given to resident bidders against nonresident bidders from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. The term "resident bidder" means a person, partnership, corporation, or joint venture that is (a) authorized to transact business in Colorado and maintains its principal place of business in Colorado; or (b) authorized to transact business in Colorado, maintains a place of business in Colorado, and has paid Colorado unemployment compensation taxes in at least six (6) of the eight (8) quarters immediately prior to bidding on a construction contract for the Project.

§ 15.10 It is hereby mutually understood by and between the parties hereto that no contractor, subcontractor, materialman, vendor, laborer, mechanic, or other person, can or will contract for or in any other manner have or acquire any lien upon the Project building or Works covered by this Contract, or the land upon which the same is situated.

§ 15.11 After the date of final completion of the Work, final settlement for the Project shall be advertised in accordance with Colorado law, including without limitation, C.R.S. § 38-26-107.

§ 15.12 Upon submission of the final request for payment, the time of final settlement for the Work shall be established and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement. Final payment and settlement shall be made at the time of final settlement as advertised, or as soon thereafter as appropriate and practicable, in the judgment of the Owner. The Owner shall not authorize final payment until all items on the final punch list are complete, all operations and maintenance manuals accepted, all Owner training is complete, and all close out documents are filed with the Owner.

§ 15.13 Neither the final payment nor any part of any sums withheld shall become due until the Contractor delivers to the Owner verified documentation showing full payment for all labor, materials, supplies, and equipment expended upon or incorporated in the Work under the Contract. If any unpaid claim for such labor, materials, supplies, or equipment is filed with the Owner before payment in full of all sums due the Contractor on the final settlement date, the Owner shall withhold from the Contractor sufficient funds, if available, to provide for the payment of such claim, until the same is paid or withdrawn. Such payment or withdrawal shall be evidenced by filing with the Owner a receipt for payment in full or an order authorizing withdrawal signed by the claimant or its duly authorized agent or assignee. Such funds shall ordinarily not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor, as set forth in the published notice of final settlement, unless an action has been commenced within that time to enforce such unpaid claim and a notice of lis pendens has been filed with the Owner. At the expiration of the ninety-(90)-day period, the Owner shall release to the Contractor all funds that are not the subject of such action. Notwithstanding the provisions in this section, in the event the Colorado statutory procedure as set forth herein is amended during the term of the Contract, such amended procedure shall be substituted accordingly.

§ 15.14 If any claim for such labor, materials, supplies, or equipment remains unsatisfied after all payments are made by the Owner to the Contractor, the Contractor shall refund to the Owner all sums which the latter may for any reason be compelled to pay to satisfy such claim, including all costs and attorneys' fees incurred



by the Owner as a result of the Contractor's default in such respect.

§ 15.15 The Contractor's records and the records of any of the Contractor's affiliates, subsidiaries or parent companies shall be subject to inspection and audit in connection with the Contract. "Records" shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other supporting evidence reasonably deemed necessary by the Owner to substantiate charges related to the Contract. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Owner or its agent or authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the Work, the appropriateness of the adjusted guaranteed maximum, if applicable, the quality of the Work installed, and/or any invoices, Change Orders, payments or claims submitted by the Contractor or any of its payees pursuant to the execution of the Contract.





## SUPPLEMENTARY CONDITIONS

The following terms and conditions modify, change, delete from, or add to the “General Conditions of the Contract for Construction”, AIA Document A201, 2017 Edition. Where any article of the General Conditions is modified or any paragraph, subparagraph, or clause thereof is modified or deleted by these supplements, the unaltered provisions of that article, paragraph, subparagraph, or clause shall remain in effect.

All Divisions of the Specifications shall be subject to the General Conditions and Supplementary Conditions.

### MODIFICATIONS TO ARTICLES OF THE GENERAL CONDITIONS

#### ARTICLE 1 – GENERAL PROVISIONS / 1.1 BASIC DEFINITIONS

Omit Paragraph 1.1.1 and substitute the Following Paragraph:

##### 1.1.1. The Contract Documents

The Contract Documents consist of the Owner – Contractor or Owner – Construction Manager as Constructor Agreement, the conditions of the Contract (General, Supplemental, and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to, and all 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 written interpretation issued by the Owner; or (4) a written order for a minor change in the Work issued by the Owner or by the Architect with Owner approval. The Contract documents do not include Bidding Documents such as the Advertisement, or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractors Bid, or portions of Addenda, relating to any of these, or any other documents, unless specifically enumerated in the Owner – Contractor Agreement.

Omit Paragraph 1.1.2 and substitute the following Paragraph:

##### 1.1.2. The Contract

The Contract Documents form the Contract for Service. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

Omit Paragraph 1.1.3 and substitute the following Paragraph:

##### 1.1.3. The Work

The Work comprises the completed services required by the Contract Documents and includes all labor necessary to produce such services, and all materials and equipment incorporated, or to be incorporated, in such construction.

Omit Paragraph 1.1.4 and substitute the following Paragraph:

##### 1.1.4. The Project

The Project is the total services of which the Work performed under the Contract Documents may be the whole, or part, of it.

#### ARTICLE 1 – GENERAL PROVISIONS / 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

##### 1.2.1 Add the following to this Subparagraph:

These General Conditions are modified and amended by Supplementary Conditions (Document 007300).

##### 1.2.1.1 Add the following Subparagraph:

In the case of discrepancy or in the event of a conflict between the different Contract Documents, the documents shall take precedence in the following order:

- .1 Change Orders;
- .2 Written Amendments to Construction Agreement (including, if applicable, the GMP);
- .3 Construction Agreement;

- .4 General Contract Conditions (including the Owner's Consultant Guidelines and Appendices);
- .5 Drawings and specifications
- .6 Bid Documents, if applicable, including addenda

Where two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision.

#### ARTICLE 1 – GENERAL PROVISIONS / 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

Omit Paragraph 1.5.1, 1.5.2 and 1.6 and substitute the following Paragraphs:

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 is described. 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 or the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service shall be returned or suitably accounted for to the Architect, on 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, Architect and the Architect's consultants. Submittal or distributions 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.

1.5.2 The Architect may release certain drawing information in electronic format to the Contractor, subcontractors, and material suppliers for use in preparation of shop drawings or other uses upon request by the Contractor. The procedure for this request and requirements shall be as outlined in the "NOTICE" and "AGREEMENT" attached to this Document.

#### ARTICLE 2 – OWNER / 2.1 GENERAL

2.1.1 At Section 2.1.1, following the phrase ". . . who shall have . . .", insert the words: "to the extent permissible under Colorado law."

ARTICLE 2 – OWNER / 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER Delete the first sentence of this Paragraph and substitute the following:

2.2.1 The Owner, by its Contract, has furnished to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

2.2.2 Add the words "if required", between the words "Owner" and "shall" in the first sentence.

#### ARTICLE 2 – OWNER / 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4 Delete and substitute the following Subparagraph:

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails after seventy-two (72) hours written notification to the Contractor by the Owner, to commence and continue correction of such default or neglect with diligence or promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. 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

Omit Paragraph 3.1.1 and substitute the following Paragraphs:

3.1.1 The Contractor is the person, or entity, identified as such in the Owner – Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor, or Construction Manager as Constructor, or his authorized representative.

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

#### ARTICLE 3 – CONTRACTOR / 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.2 Delete the second sentence of 3.2.2 and substitute the following:

If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to the Architect, the Contractor shall assume responsibility for such construction activity and shall bear an equitable amount of the costs attributable to any necessary correction.

#### ARTICLE 3 – CONTRACTOR / 3.4 LABOR AND MATERIALS

Add the following Subparagraph:

3.4.4 Contractor shall have based its bid upon the use of any of the items specifically named in the Specifications, or on the Drawings, or as approved in an Addendum issued by the Architect and signed by the parties. No changes or substitutions will be considered after the award of the Contract except those which will result in a better job, a savings to the Owner, or both, or due to unavailability of specified product for reasons beyond the Contractor's control.

#### ARTICLE 3 – CONTRACTOR / 3.5 WARRANTY

Omit the Paragraph 3.5 text and substitute the following Paragraph:

3.5 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty period will be twelve (12) months from the date of substantial completion.

#### ARTICLE 3 – CONTRACTOR / 3.6 TAXES

Add the following Subparagraph:

3.6.1 Colorado State, County and Municipal Taxes: The Owner is exempt from the collection and payment of State, municipal, RTD and county sales and use taxes on any materials, supplies, or other equipment used or installed in the work. The contract bid amount and any agreed upon variations thereof shall not include the cost of any such taxes. It shall be the responsibility of the Contractor and all subcontractors to complete and file an "Application for Exemption Certificate" with the Colorado Department of Revenue. Copies of tax exemption certificates shall be filed with the Contractor by each subcontractor at a time and in a manner directed by the Contractor and are subject to review by Owner upon request.

#### ARTICLE 3 – CONTRACTOR / 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

Omit Paragraph 3.7.1 and substitute the following Paragraphs:

3.7.1 Building permits shall be taken out by the Contractor from the appropriate jurisdiction entity. The building permit fee

will be paid for by the Owner. Mechanical, Plumbing, and Electrical permits shall be taken out and paid for by the mechanical and electrical subcontractors. Mechanical, Plumbing, and Electrical work shall be inspected by the appropriate jurisdiction entity. These subcontractors shall also be required to pay for any and all inspections required. The underground utility subcontractor shall pay for any and all inspections required by the State of Colorado for underground electrical and plumbing work. The underground utility subcontractor shall pay for any required sewer, water and gas connection fees. The Owner will pay for plant investment fees and tap charges based on the cost of mains serving the site.

The Contractor shall obtain a fire inspection permit from applicable Fire Department having jurisdiction of the project site. The Owner will pay the Fire Department review fees. The Contractor shall call for all inspections required by the local and State Building Inspection Authority, including the local Fire Department.

Assessments against the property are the obligation of the Owner and will be paid by the Owner as necessary to assure issuance of permits specified above. This includes sewer and water charges for capital improvements and line extensions.

Add the following subparagraphs:

3.7.6 Nothing contained in the Specifications or on the Drawings shall be construed as authority for any Contractor to violate any applicable codes or ordinances in effect at the site. Code and ordinances shall take full and complete precedence over the Contract Documents in this respect, except where the Contract Documents call for work or materials of higher standard than those required by codes and ordinances in which event the higher standard shall control.

3.7.7 The Contractor shall be required to obtain all the necessary and applicable Contractors licenses from the appropriate governmental authorities and shall not allow any Subcontractor to commence work on this contract until all required licenses of the Subcontractor have been obtained.

#### ARTICLE 3 - CONTRACTOR / 3.9 SUPERINTENDENT

Omit Paragraph 3.9.1 and substitute the following Paragraphs:

3.9.1 The Contractor shall employ a competent Construction Superintendent and necessary assistants. The Contractor's Superintendent or an Assistant Superintendent or authorized designee shall be on site at all times while work is in progress including but not limited to weekends, evenings and nights. No subcontractors shall perform work on the site without the presence of the Superintendent or Assistant Superintendent.

The Contractor's Superintendent shall be on the job site full time during normal working hours until all punch list items have been completed to the satisfaction of the Owner and Architect. Communication given to the Superintendent shall be as binding as given to the Contractor.

#### ARTICLE 3 – CONTRACTOR / 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

Add the following Subparagraph:

3.10.4 The schedule shall indicate the start and completion of each of the elements on the Schedule of Values. The schedule shall indicate the major dependencies among elements on the schedule. The completion time shall be as specified in the Owner-Contractor Agreement. The schedule shall be revised when the completion time is revised by Change Order.

See Specifications, Division 1, for detailed procedures.

#### ARTICLE 3 – CONTRACTOR / 3.11 DOCUMENTS AND SAMPLES AT THE SITE

See Specifications, Division 1, for Record Documents Requirements.

#### ARTICLE 3 – CONTRACTOR / 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Paragraph 3.12.11 shall be added and shall read as follows:

The following documentation / information must be received by the District CAD Operator within six (6) months of the

Certificate of Occupancy or project completion.

The following documentation/information must be received to the District CAD Operator within sixty (60) days of the Certificate of Occupancy or project completion.

As-Constructed Record drawings to include:

- 1) One (1) digital copy O&M with index and tabs; pdf version
- 2) One (1) digital copy of the Project Specifications/Manual; pdf version
- 3) One (1) USB drive containing CAD drawings, which shall include the .dwg, all X-refs, and plot styles, and pdf versions of the As-Built/Record documents
- 4) One (1) full size (ARCH E 36" x 48" Standard US Architectural Drawing) of the As-Built / Record documents  
OR  
One (1) full size (ANSI E 34" x 44" Standard US Engineering Drawing size) of the As-Built / Record documents
- 5) All Project Warranty documentation

#### ARTICLE 3 – CONTRACTOR / 3.13 USE OF SITE

Paragraph 3.13.1 shall be added and shall read as follows:

The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The Contractor acknowledges that the work site may comprise school buildings and school areas that may be occupied during the performance of some portions of this Contract.

Paragraph 3.13.2 shall be added and shall read as follows:

The location and extent of underground utilities, fiber network, cables and conduit indicated on the Drawings are not guaranteed. Such information is provided only for such as bidders and contractors may choose to make of it. The Contractor shall notify all public utility companies forty-eight (48) hours prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company. If the utility service must be interrupted, the Contractor shall notify the head of the local administrative services (i.e., city manager, mayor or city clerk, as applicable) and the utility users affected by the interruption. Such notice shall consist of publication in a local newspaper and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

#### ARTICLE 3 – CONTRACTOR / 3.14 CUTTING AND PATCHING

See Specifications, Division 1, for additional requirements.

#### ARTICLE 3 – CONTRACTOR / 3.15 CLEANING UP

See Specifications, Division 1, for additional requirements.

#### ARTICLE 3 – CONTRACTOR / 3.17 ROYALTIES, PATENTS AND COPY RIGHTS

Omit the Paragraph 3.17 text and substitute the following Paragraph:

3.17 The Contractor shall pay all royalties and license fees. The Contractor's work product, including without limitation, Contractor's notes, memoranda, photographs, spreadsheets, data, designs, plans, drawings, submittals, redlines and revisions made thereto, and any other documents produced throughout the Project (collectively "Work Product"), shall be delivered to the Owner within the time frame(s) contemplated by the Owner-Contractor Agreement or at the latest upon the date of final completion or termination of the Contract, shall become the property of the Owner, and may be used by the Owner for any purpose. The Contractor shall defend all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising out of Owner's ownership or use of Contractor's Work Product and shall indemnify and hold harmless the Owner from any and all liability or loss on account thereof, and shall pay any judgements or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys' fees. If the Contractor has information that the process or article specified involves the infringement of a patent it shall be responsible for any and all liability or loss resulting therefrom unless it promptly furnishes such information to the Architect in writing.

## ARTICLE 3 – CONTRACTOR / 3.18 INDEMNIFICATION

Omit the Paragraph 3.18.1 text and substitute the following Paragraph:

3.18.1 To the fullest extent permitted by Law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their directors, agents and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorneys' fees arising out of, or resulting from, the performance of the work, provided that any claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to, or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (2) is caused in whole, or in part by, any negligent act or omission of the Contractor, and Subcontractor, anyone directly, or indirectly, employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right, or obligation, of indemnity which would otherwise exist as to any party, or person, described above.

## ARTICLE 4 – ARCHITECT / 4.1 GENERAL

4.1.3 Change the phrase "Owner shall employ to "Owner may appoint".

## ARTICLE 4 – ARCHITECT / 4.2 ADMINISTRATION OF THE CONTRACT

4.2.2 Delete the first Sentence and substitute the following:

The Architect shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work to endeavor to guard the Owner against defects and deficiencies in the Work and to determine in general if the Work is being performed in accordance with the Contract Documents.

4.2.3 Add the following to the Subparagraph:

The Architect shall bring any nonconforming work, of which he becomes aware, to the attention of the Owner.

## ARTICLE 5 – SUBCONTRACTORS / 5.2 AWARD OF SUBCONTRACTORS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Omit Paragraph 5.2.1 and substitute the following Paragraph:

5.2.1 Unless otherwise required by the Contract Documents, or Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing the names of the persons, or entities (including those who are to furnish materials, or equipment fabricated, to a special design) proposed for each of the portions of the Work.

5.2.2 Contractor shall execute sub-contractor(s) and supplier contracts / agreements within forty-five (45) days after Notice to Proceed is issued, or ninety (90) days prior to scheduled completion of that portion of the work. Contractor shall provide documentation as requested by Owner & Architect.

Omit Paragraph 5.2.3 and substitute the following Paragraph:

5.2.3 If the Owner has reasonable objection to any such proposed person, or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection, and the Contract Sum shall be increased, or decreased, by the difference in the cost occasioned by such substitution and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names, as required above.

## ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS / 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

Omit Paragraph 6.1.1 and substitute the following Paragraph:



6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project, or other work, on the site under these, or similar, Conditions of the Contract. If the Contractor claims that delay, or additional cost, is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

Omit Paragraph 6.1.2 and substitute the following Paragraph:

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

Omit Paragraph 6.1.3 and substitute the following Paragraph:

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith.

## ARTICLE 7 – CHANGES IN THE WORK / 7.1 GENERAL

7.1.2 The last clause in section 7.1.2 shall be deleted and replaced by the following clause: "an order for a minor change 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 may be issued by the Architect with Owner approval."

## ARTICLE 7 – CHANGES IN THE WORK / 7.2 CHANGE ORDERS

Omit Paragraph 7.2.1 and substitute the following Paragraph:

7.2.1 A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work, or an adjustment in the Contract Sum, or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum, or the Contract Time. The cost, or credit, to the Owner resulting from a Change Order shall be determined in one (1) or more of the following ways:

- .1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 By Unit prices named in the bid, or subsequently agreed upon; unit prices shall include all Contractors' costs, including materials and labor, and shall be applied directly to the quantities or the difference in quantities for which unit prices are requested.

The Contractor may include a sum up to fifteen percent (15%) of the total of 7.2.1.1 above as compensation to cover the cost of overhead, profit, and any other general expenses; subcontractor and second level subcontractors may include a sum up to ten percent (10%) for such expenses; when both additions and credits are involved in any one (1) change, the allowance for mark-up shall be figured on the basis of net increase, if any.

- .3 By reasonable estimated cost of:
  - (1) Labor, including foremen (labor costs shall be direct costs).
  - (2) Social Security and old age and unemployment contribution.
  - (3) Materials entering permanently into the work.
  - (4) The ownership or rental cost of construction plant and equipment during the time of use on the extra work.

The Contractor may include a sum up to fifteen percent (15%) of the total of 7.2.1.3 above as compensation to cover the cost of overhead, profit, and any other general expenses; subcontractor and second level subcontractors may include a sum up to ten percent (10%) for such expenses; when both additions and credits are involved in any one (1) change, the allowance for mark-up shall be figured on the basis of net increase, if any.

The Contractor shall include an itemized breakdown showing quantities, unit costs, hours, rates of labor, and any other costs in such detail as may be required to allow the reasonableness of costs to be established.

Similar cost information covering Subcontractor's work shall be included as part of the Contractor's proposal. Minimum charges for 'handling' will not be acceptable. Request for quotations shall be returned to the Architect within ten (10) calendar days of receipt by the Contractor.

- .4 If none of the methods set forth in Clauses 7.2.1.1, 7.2.1.2 or 7.2.1.3, is agreed upon, the Contractor, provided he received a Change Order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit.

7.3.11 Add the following Subparagraph:

Modification Orders, signed by the Architect, approved by the Owner, and accepted by the Contractor, may be utilized as a written amendment to the Contract. A Modification Order authorizes the Contractor, subject to the provisions of the Contract, to make changes for which the contract sum will be modified in a Change Order to follow. It is intended to expedite changes in the work for which a cost or credit is determined after the Contractor is advised by Modification Order to proceed with such work. The cost or credit for the work shall be determined as required by Supplementary Condition Article 7.2.1 and, if acceptable, will be included in a future Change Order to the Contract.

ARTICLE 8 – TIME / 8.3 DELAYS AND EXTENSIONS OF TIME

Omit Paragraph 8.3.1 and substitute the following Paragraph:

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, unavoidable casualties, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

Extension of Contract Time for minor changes in the work and labor disputes will not be allowed for this project.

ARTICLE 9 – PAYMENTS AND COMPLETION / 9.2 SCHEDULE OF VALUES

9.2 Add the following to this Subparagraph:

The Schedule of Values shall be prepared in such a manner that each major item of subcontractor work is shown as a single line item on AIA Document G 703, Application and Certificate for Payment, Continuation Sheet. As a guide, each section of the Project Manual should be shown as a single line item. Upon request by the Architect, the Contractor shall support values given with data that will substantiate their correctness. The Schedule of Values shall be used only as a basis for the Contractor's Application for Payment.

Each item on the Schedule of Values shall be identified as belonging to the major categories of Sitework, Building Construction, or General Conditions. In general, Sitework shall include all project work beyond five (5) feet outside the building perimeter (to include off-site utilities, if any), and Building Construction shall include all work within five (5) feet of building perimeter.

General Condition items shall include costs such as supervision and mobilization, which apply to site work and building construction. Division of the Schedule of Values into these categories may require the Contractor to create additional line items of the Schedule of Values.

Breakdown installed costs into delivered cost of product and total installed cost with overhead and profit. For each line item which has installed value of more than \$10,000.00, breakdown costs to list major products or operations under each item. Round off figures to nearest dollar and make total cost of all items listed to schedule equal to total Contract sum.

If re-submittal is required after review by Architect, revise and resubmit schedule in same manner as required. Schedule must be approved prior to certification of first Application for Payment by Architect.

See Specifications, Division 1, for additional requirements.

ARTICLE 9 – PAYMENTS AND COMPLETION / 9.3 APPLICATION FOR PAYMENT

Omit Paragraph 9.3.1 and substitute the following Paragraph:

9.3.1 At least ten (10) days before the date for each progress payment established in the Owner – Contractor Agreement, the Contractor shall submit to the Owner an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor’s right to payment as the Owner may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.2 Add the following to this Subparagraph:

In order to facilitate and better assure prompt deliveries of materials, the Owner will issue payment to the Contractor for the full value of all materials, less the contract retained percentage safely stored within the county where the project is located for delivery as needed to the site of the Work. Such stored materials must be properly tagged as to material and job identification, must be available for inspection by the Architect, and such requests for payment must be accompanied by documentary evidence as to quantity and value of materials, including insurance on the materials as evidenced by a Certificate of Insurance.

Omit Paragraph 9.3.3 and substitute the following Paragraph:

9.3.3 The Contractor warrants that title to all work, materials, and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon receipt, or payment by, the Contractor, whichever occurs first, free, and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to in this Article 6 as “Liens”; and that no work, materials, or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site, or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein, or an encumbrance thereon and retained by the seller of otherwise imposed by the Contractor, or such other person.

9.3.4 Add the following Subparagraph:

With each Application for Payment, the Contractor shall submit monthly Progress Charts comparing the “work-in-place” progress to the Project Schedule.

9.3.5 Add the following Subparagraph:

Starting with the second pay application and continuing each month through completion of the Project, the Contractor shall submit lien waivers for the previous month’s pay application. These lien waivers shall cover all subcontractors and vendors as well as the Contractor’s portion of the Work. Pay applications will not be processed until the prior month’s pay application lien waivers are submitted and reviewed. Each lien waiver shall key to a specific line item(s) on the Schedule of Values.

## ARTICLE 9 – PAYMENTS AND COMPLETION / 9.5 DECISIONS TO WITHHOLD CERTIFICATION

Omit Paragraph 9.5.1 and substitute the following Paragraph:

9.5.1 The Owner may decline to certify payment and may withhold his Certificate in whole, or in part, to the extent necessary to protect the Owner from loss because of:

- .1 Defective work not remedied;
- .2 Third Party claims filed, or reasonable evidence, indicating probable filing of such claims;
- .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;
- .7 Persistent failure to carry out the work in accordance with the Contract Documents;
- .8 Failure of the Contractor to submit Progress Charts in comparison to Progress Schedule with application for payment.
- .9 Failure to comply with any laws, ordinances, regulations or orders of any public authority governing the performance of the work, including failure to obtain necessary permits or licenses.

The Owner shall make monthly progress payments as described in 9.6 until the scheduled (including time extensions made by change order) time for substantial completion. If the Project is not substantially complete at this time, the Owner will not make further progress payments until the Project is substantially complete.

Omit Paragraph 9.5.2 and substitute the following Paragraph:

9.5.2 The Contractor specifically waives the right to make application under the provisions of Section 24-91-105 C.R.S. for withdrawal of any sum held by Owner under any of the contract provisions authorizing and allowing for retainage of any portion of installment payments.

#### ARTICLE 9 – PAYMENTS AND COMPLETION / 9.6 PROGRESS PAYMENTS

9.6.1 Add the following Subparagraphs:

Payment shall be made in the full value of the Work performed and material stored, less five percent (5%) of such value which shall be retained until completion and acceptance of all Work unless otherwise agreed by Owner, and less the aggregate of any previous payments.

The Contractor specifically waives the right to make application for interest earned on retainage held by the Owner as allowed under the provisions of Sections 24-91-105 through 108, C.R.S.

Materials stored off the project site must be of specially fabricated nature and /or in a bonded warehouse to qualify for payment. The Contractor shall provide the Architect with an acceptable Certificate of Insurance with amounts and locations of stored items listed, in the name of Cherry Creek School District No. 5.

9.6.7 Add the following Subparagraphs:

Upon completion of the Work for each month and before, or contemporaneously with, payment of any sums due Contractor, which payment may be withheld as security for the faithful performance of this Contract or otherwise, Contractor shall produce and deliver to Owner, full, complete, and properly executed releases from all persons or entities who have furnished materials or labor, including Contractor, in connection with the Work.

Contractor warrants that it will pay all subcontractors and sub-subcontractors any payment due them arising out of, and pursuant to the terms of, this Contract.

9.6.8 Shall be added and shall read as follows:

Contractor warrants that it will pay all subcontractors and suppliers any payment due them arising out of this Contract. Upon request by the Owner, Contractor shall provide documentation of payment of all amounts due to all persons or entities who have furnished materials or labor, including Contractor, in connection with the Work.

#### ARTICLE 9 – PAYMENT AND COMPLETION / 9.8 SUBSTANTIAL COMPLETION

9.8.1 Shall be amended by revising the final line to read as follows: “. . . for its intended use, all major systems are operational, and all safety features are completed.”

9.8.3 Add the following sentence:

In addition to the other requirements of this Agreement, Contractor must have obtained the written approval and issuance of any occupancy permits required by the laws of the State of Colorado before Contractor shall be deemed to have achieved substantial completion.

#### ARTICLE 9 – PAYMENTS AND COMPLETION / 9.9 PARTIAL OCCUPANCY OR USE

Omit Paragraph 9.9.1 and substitute the following Paragraph:

9.9.1 The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner under the following conditions:

- 1) A Certificate of Substantial Completion shall be prepared and executed as provided in Subparagraph 9.8.4 of the accompanying General Conditions of the Contract for Construction, except that when, in the opinion of the Owner, the Contractor is chargeable with unwarranted delay in completing Work or other contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and surety permitting occupancy by the Owner

during the remaining period of Project Work.

- 2) Occupancy by the Owner shall be construed by the Contractor as being acceptance of that part of the Project to be occupied.
- 3) The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
- 4) Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims on behalf of the Owner or Contractor against each other, nor a waiver of any unknown defects or claims.

Use and occupancy by the Owner prior to project acceptance does not relieve the Contractor of his responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the project is completed and accepted by the Owner.

#### ARTICLE 9 – PAYMENTS AND COMPLETION / 9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Delete the last sentence of this paragraph and add the following:

If the Work is completed, but final completion thereof shall be prevented through delay or correction of minor defects or unavailability of materials or other causes beyond the control of the Contractor, the Owner may, in Owner's sole discretion, make final payment to the Contractor, but shall remain from such final payment an amount equal to three (3) times the cost of completing the unfinished work or the cost of correcting the defective work.

Notwithstanding the provisions of this Agreement as to payment to the Contractor, the provisions of Section 38-26-107 C.R.S. shall be applicable under circumstances of a verified statement being filed by a supplier, material supplier or subcontractor for an amount due and unpaid.

9.10.2 Add the following to this paragraph as per Article 3.12.11:

(6) All guarantees, warranties and certificates, (7) operating and maintenance manuals, (8) identification lists of materials and equipment, (9) Inspection Certificates and (10) record documents, (11) the Contractor has demonstrated to the Owner the proper operation and maintenance of all equipment, and (12) Resolution of Final Change Order and Contract Sum.

Upon completion of the above, the project shall be advertised by "Notice of Contractor's Settlement", in accordance with Colorado law, including without limitation, C.R.S. 38-26-107.

On the date of final settlement thus advertised, and after the Contractor has submitted a written notice to the Owner that no claims have been filed, final payment and settlement shall be made in full.

If any unpaid claim for labor, materials, supplies or equipment is filed before payment in full of all sums due the Contractor, the Owner shall withhold from the Contractor sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his duly authorized agent or assignee. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor, as set forth in the published notice of Contractor's Settlement unless such action at law shall be commenced within that time to enforce such unpaid claim and notice of such action at law shall have been filed with the Owner. At the expiration of the ninety (90) day period, the Owner shall release to the Contractor all monies as are not the subject of such action at law.

9.10.3 Delete this paragraph in its entirety. See revised Subparagraph 9.10.1

#### ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY / 10.1 SAFETY PRECAUTIONS AND PROGRAMS

Omit Paragraph 10.1.1 and substitute the following Paragraph:

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

#### ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY / 10.2 SAFETY OF PERSONS AND PROPERTY

Omit Paragraph 10.2.1 and substitute the following Paragraph:

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

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

Omit Paragraph 10.2.2 and substitute the following Paragraph:

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

Omit Paragraph 10.2.3 and substitute the following Paragraph:

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

Omit Paragraph 10.2.4 and substitute the following Paragraph:

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

Omit Paragraph 10.2.5 and substitute the following Paragraph:

10.2.5 The Contractor shall promptly remedy all damage, or loss, to any property referred to in Clauses 10.1.2 and 10.1.3 and Project Specifications caused in whole, or in part, by the Contractor, any subcontractor, and Sub-subcontractor, or anyone directly, or indirectly, employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Article 7.2.1.2 and Project Specifications, except damage or loss attributable to the Acts, or omissions, of the Owner, or anyone directly, or indirectly employed by the Owner, or by anyone for whose acts they may be liable, and not attributable to the fault, or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 2.

Omit Paragraph 10.2.6 and substitute the following Paragraph:

10.2.6 The Contractor shall designate a responsible member of his 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.

Omit Paragraph 10.2.7 and substitute the following Paragraph:

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

#### ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY / 10.2 SAFETY OF PERSONS AND PROPERTY.

10.2.9 Shall be added and shall read as follows:

Notwithstanding any other provision herein, the Contractor shall take all necessary measures to store materials on site for which payment has been made by the Owner so that they shall not deteriorate, be damaged or be stolen. The Contractor shall, to the best of its ability, safeguard such materials against burglary, pilferage, fire, vandalism and mischief. The Contractor shall bear sole responsibility (1) for the care and protection of materials and work installed in the building and materials stored on the site for which payment has been made, and (2) for the restoration of damaged work and replacement of damaged or stolen materials at no additional cost to the Owner.



## ARTICLE 11 – INSURANCE AND BONDS / 11.1 CONTRACTOR’S LIABILITY INSURANCE

### Add Paragraph 11.1.2:

Contractor agrees to obtain and maintain without interruption during the performance of the work and until acceptance by the Owner the following described insurance naming the Owner as additional insured on the insurance described in Sections (2) and (3). Such insurance shall be primary to any insurance carried by Owner and shall be carried with insurance companies satisfactory to Owner. Contractor will provide Owner certificates of insurance prior to the start of the work evidencing the required insurance.

The required insurance coverage is as follows:

- .1 Workers Compensation with statutory limits, as required under the laws of the State of Colorado and Employer’s Liability of not less than \$500,000. Such policy shall contain a waiver of subrogation in favor of the Owner.
- .2 Commercial General Liability Insurance including premises / operations, personal injury, products / completed operations and contractual liability coverage’s with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Such policy shall contain a waiver of subrogation in favor of the Owner.
- .3 Commercial Automobile Liability covering all automobiles, owned, hired and non-owned vehicles used in the performance of this contract with limits of no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Such policy shall contain a waiver of subrogation in favor of the Owner.

### 11.1.5 Add the following Subparagraph:

Certificates of Insurance shall include the statement that the hold harmless clause as required under General Conditions Article 3.18 is included in the policy.

### 11.1.6 Add the following Subparagraphs:

The Contractor shall take out and maintain during the life of this Contract the above stated insurance written by Insurance Carriers satisfactory to the Owner. The Comprehensive General Liability and Comprehensive General Automobile Liability coverage’s will insure the Owner for work performed pursuant to this contract and will protect said Owner from and against all claims arising out of this Contract for injury to persons (including death) and/or property of another, whether such operations be by the Contractor or any Subcontractor or anyone directly employed or indirectly employed.

11.1.7 It is a further condition of this Agreement that the Owner shall be named as an Additional Insured, only for operations arising out of the performance of this Contract, under the following policies of insurance carried by the Contractor: (a) Comprehensive General Liability, (b) Comprehensive General Automobile Liability.

11.1.8 It is also understood and agreed on the part of the Contractor that the Contract will cover Owner, its officers, agents, employees and servants against contingent liability for any and all claims of any nature whatsoever arising out of said operations and covered by the herein above policies of insurance.

11.1.9 If the Contractor fails to procure and maintain such insurance, or if an aggregate policy limit has been eroded, the Contractor will notify the owner. Owner shall have the right to procure and maintain the said insurance for and in the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and to maintain such insurance.

## ARTICLE 11 – INSURANCE AND BONDS / 11.3 PROPERTY INSURANCE

Delete Subparagraphs 11.3.1 through 11.3.10 and substitute the following:

11.3.1 The Contractor shall procure and maintain at his own expense, until completion of direct work and acceptance thereof, a builder’s risk insurance policy insuring against “all risks of physical loss or damage” as the term is commonly construed in the insurance industry, insuring the entire project against such physical loss or damage. Such coverage contains specific limitations and exclusions. Faulty workmanship and negligence shall be excluded. A copy of the policy will be provided to the Owner upon request.

If other special insurance not provided for herein is desired by the Contractor, the Contractor shall purchase such insurance at his expense.

11.3.2 Such insurance shall be written on forms acceptable to Owner in an amount not less than the final completed value of the project; less cost of site preparation (including fences necessary to secure work area and excavation land, foundations below the lowest basement floor, underground pipes and wiring, sidewalks, curbs and gutters; and shall name as insured the Owner and Contractor. It shall be understood that subcontractors and second level subcontractors are insured as to their interests in the partially completed projects.

11.3.3 Any insured loss is to be adjusted with the Owner and made payable to the Owner as Trustee for the insured, as their interests may appear.

11.3.4 The insurance policy shall provide for necessary access to the project by Owner as follows: "Permission is hereby granted for the Owner to occupy such portion of the premises completed or suitable for occupancy prior to final acceptance of the entire project, any provision of the policy to the contrary notwithstanding".

11.3.5 The Contractor and his subcontractors and suppliers waive all rights against the Owner for damages caused by fire or other perils to the extent covered by the builder's risk insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights they have to proceeds of such insurance provided by the owner on their behalf. The Contractor shall require similar waivers of his subcontractors and all lower tier subcontractors, agents and employees. In waiving rights of recovery under terms of this sub paragraph, the term "owner" shall be deemed to include his employee, and the architect / engineer and his employees as the owner's representative as provided in the contract document.

11.3.6 The Contractor, on his written request, shall be named jointly with the Owner in all policies, all of which shall be open to his inspection.

11.3.7 The following are specific exclusions: This insurance does not cover pollution, land, glass breakage, any tools owned by mechanics, any equipment, scaffolding, staging, towers and forms owned or rented by the Contractor, the capital value of which is not included in the cost of the work, or any temporary structures or trailers used by the Contractor or any subcontractor or material supplier.

11.3.8 The Contractor shall pay any deductible amount up to One-hundred Thousand and No/100 Dollars (\$100,000) when making a claim against the property insurance policy.

11.3.9 To the fullest extent permitted by law, the Contractor shall indemnify and hold the Owner and the Architect and their directors, agents, and employees harmless from and against all liabilities, costs, and expense, including attorneys' fees, arising out of, involving, or in connection with any death, personal injury, or property damage including the Work itself, and including the loss of use therefrom caused in whole or in part by Contractor's acts or omissions, or the acts or omissions of Contractor's subcontractors, agents, or employees. This specific indemnification by the Contractor is in addition to and not in lieu of other remedies which may be available to the Owner. This provision shall survive the termination of the Contract.

#### ARTICLE 11 – INSURANCE AND BONDS / 11.4 PERFORMANCE BOND AND PAYMENT BOND

Omit Paragraph 11.4.1 and substitute the following Paragraph:

11.4.1 The Contractor shall within ten (10) days after execution of the Owner-Contractor Agreement execute, deliver to and file with the Owner, a good and sufficient bond to be approved by the Owner in a penal sum equal to the Contract price. Such bond shall be duly executed by a qualified corporate surety, conditioned upon the true and faithful performance of the Owner-Contractor Agreement, and warranty work, and, in addition, shall provide that if the Contractor or its subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or its subcontractor in performance of the Work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest as provided by law. Performance and payment bonds shall be on forms provided by the Owner and must be issued by qualified sureties as specified herein. The Performance Bond shall additionally guarantee that the Contractor shall remedy any omissions; correct any and all defects; and adjust and make operable all component parts of the work falling under the requirements of this Agreement which may be called to his attention within a period of twenty-four (24) months following the Date of Final Completion established in the Letter of Acceptance. The expense of all bonds shall be borne by the Contractor. If, at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

Add Subparagraph 11.4.1.1 as follows:

11.4.1.1 The Contractor shall require landscaping, membrane roofing, mechanical and electrical subcontractors each to furnish one hundred per cent (100%) Performance and Payment Bonds covering their portion of the work. Such bonds shall be issued in favor of the Contractor and authenticated copies shall be submitted in proper form to the Owner via the Architect before the first Application for Payment by the Contractor is submitted to the Architect. The cost of these bonds shall be individually listed on the Schedule of Values.

#### ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK / 12.2 CORRECTION OF WORK

12.2.2.1 - Section 12.2.2.1 shall be amended by adding the phrase "or within such longer period of time as may be prescribed by law" after the words "Contract Documents" in the fourth line of the first sentence.

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS / 13.1 GOVERNING LAW

Omit the Paragraph 13.1 text and substitute the following Paragraph and Subparagraph:

13.1 This agreement shall be governed in accordance with the laws of the State of Colorado and the parties hereto consent and agree to the jurisdiction and venue of the District Court in and for the County of Arapahoe, State of Colorado, for any litigation arising out of this agreement.

13.1. Compliance with C.R.S. 8 – 17.5 – 101 *et seq*:

- .1 The Vendor / Contractor certifies that the Vendor shall comply with the provisions of C.R.S. 8-17.5-101, *et seq*. Specifically, the Vendor shall not knowingly employ, or contract with, an illegal alien to perform services under this Contract and shall not enter into a contract with a subcontractor that fails to certify to the Vendor that the subcontractor shall not knowingly employ, or contract with, an illegal alien to perform services under this Contract;
- .2 The Vendor has verified, or will verify, or attempt to verify that the Vendor does not employ any illegal aliens by participation in the "Basic Pilot Employment Verification Program", administered by the Social Security Administration and Department of Homeland Security, or otherwise comply with the provisions of C.R.S. 8-17.5102(2)(b)(I);
- .3 The Vendor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment;
- .4 The Vendor is prohibited from using the Basic Pilot Employment Verification Program procedures or undertake pre-employment screening of job applicants while this Contract is being performed;
- .5 In the event the Vendor obtains actual knowledge that a subcontractor performing services under this Contract knowingly employs, or contracts with, an illegal alien, the Vendor shall: (a) notify the subcontractor and the District within three (3) days of such knowledge, and (b) terminate the sub-contractor if the subcontractor does not stop employing, or contracting, with the illegal alien within three (3) days after notification. The Vendor shall not terminate the contract with the subcontractor if, during said three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed, or contracted with, an illegal alien to perform services under this Contract.

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS / 13.3 WRITTEN NOTICE

13.3. Section 13.3 shall be amended by adding the phrase ", or within three (3) days after depositing the same, addressed to the Party to receive notice, postage prepaid, in the U.S. Mail.

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS / 13.4 RIGHTS AND REMEDIES

13.4.1 Shall be amended by adding the phrase "unless otherwise specified herein" at the end of the section.

13.4.2 Shall be amended by adding the phrase "or as specified in the Contract" at the end of the section.

13.4.3 Shall be added and shall read as follows:

Notwithstanding any other provision of these General Conditions, the statute of limitations for the filing of any and all claims arising pursuant to the Work and Contract Documents shall be six (6) years from the date of Substantial Completion as defined in subparagraph 8.1.3 or the date of discovery of the claim, whichever is later, or such longer period as may be permitted by law.

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS / 13.5 TESTS AND INSPECTIONS

13.5.1 Add the following to this Subparagraph:

The Contractor shall not use any material or equipment represented by samples found to be unacceptable. See Specifications, Division 1, for detailed procedures and cost of testing.

13.5.7 Add the following Subparagraph:

The Contractor shall not use any material or equipment represented by samples found to be unacceptable. See Specifications, Division 1, for detailed procedures and cost of testing.

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS / 13.7 TIME LIMITS ON CLAIMS

13.7.1 Add the following to the end of the first sentence of the Paragraph:

or the Date of Actual Knowledge of the Cause or Claim by the Owner, whichever is later.

#### ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT / 14.1 TERMINATION BY THE CONTRACTOR

14.1.1 Add the following to the last sentence in this Subparagraph before the word "or" at the end of said paragraph:

without prior written notice to Contractor of the reason for withholding payment; or

14.1.3 Delete the words "and damages".

#### ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT / 14.2 TERMINATION BY THE OWNER FOR CAUSE

Omit Paragraph 14.2.1 and Subparagraphs 14.2.1.1 through 14.2.1.4 and substitute the following Paragraph:

14.2.1 If the Contractor is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently, or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen, or proper materials, or if he fails to make prompt payment to Subcontractors, or for materials for Labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification that sufficient cause exists to justify such action, may without prejudice to any right, or remedy, and after giving the Contractor and his surety, if any, seven (7) days written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction / maintenance equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

Omit Paragraph 14.2.4 and substitute the following Paragraph:

14.2.4 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for Owner's time made necessary thereby, such excess shall be retained by the Owner. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT/14.2 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.3 It is amended to read;

In the event of termination for the Owner's convenience, and provided Contractor is not in default under the terms of the Contract Documents, Contractor shall be reasonably compensated for the construction work earned to the date of such termination based on the actual cost of work completed as of such date. It is the intent of Owner and Contractor that Owner shall never incur a penalty for any termination of Contractor by Owner.

ARTICLE 15 – CLAIMS AND DISPUTES/15.1 CLAIMS

15.1.2 shall be amended by prefacing the section with the words "Except as otherwise provided herein"

15.1.3 Add the following sentence to this Paragraph:

During mediation, arbitration or litigation of any claims or dispute the Contractor shall carry on the work and maintain the progress schedule as called for in the Contract Documents and shall do so notwithstanding any dispute, claim or allegation regarding the Work, Contract, Contract Documents or the terms and conditions thereof.

Omit Subparagraph 15.1.5.2 and substitute the following Subparagraph:

15.1.5.2 Extensions of the contract completion time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the Climatological Data, U.S. Department of Commerce, for the project area and only if a request for such an extension of time is received within ten (10) days of the first date of delay. The above statement only applies to work described as "Early Completion Site Elements". No other extension of Contract time due to weather delays will be permitted.

ARTICLE 15 – CLAIMS AND DISPUTES / 15.2 INITIAL DECISION

15.2.3 delete the last sentence.

15.2.5 the last sentence shall be modified after the phrase "final and binding on the parties" to read: "but subject to mediation, arbitration or litigation, as may be determined in accordance with the Contract Documents."

ARTICLE 15 – CLAIMS AND DISPUTES / 15.4 ARBITRATION

15.4.1 shall be amended by replacing the word "shall" with the word "may" in the first sentence of that section.

15.4.1 Add the following:

Contract Performance During Arbitration. During litigation or arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 15.1.3.

15.4.5 Add the following:

The Owner, may, at his option refuse to arbitrate any claim or demand and judicially litigate any claim or demand it may assert against the Contractor.

**ADDITIONS TO ARTICLES OF GENERAL CONDITIONS**

ARTICLE 16 – MEASUREMENTS

Before ordering any material or doing any work, the Contractor shall verify all measurements at the project and shall be responsible for correctness of same. No extra charge or compensation shall be allowed because of difference between actual dimensions and the measurements indicated on the Drawings.

Any difference which may be found shall be submitted to the Owner for consideration before proceeding with the work. The Architect and Owner will not be responsible for the scaling of Drawings.

#### ARTICLE 17 – SURVIVAL

Any provision in the contract Documents to the contrary notwithstanding, the obligations of Owner and Contractor, each to the other, under this Contract, shall survive the termination of the Contract and shall continue to be binding upon the parties after such termination and until such time as full performance of such obligations shall have been made.

#### ARTICLE 18 – LEGAL ACTIONS

As a condition precedent to and as additional consideration for the award of any contract or subcontract pursuant to these Specifications, the Contractor and all subcontractors, suppliers, and other parties to the performance of the work required by these Specifications, do agree that in the event any party institutes a suit against any other party because of any alleged failure to perform properly hereunder, or any alleged error, omission, breach of warranty, negligence or malpractice hereunder, and if such suit is not successfully prosecuted to a judgment in favor of the party plaintiff, or if it is dismissed, or if a judgment is rendered for any defendant or defendants, the party instituting the suite hereby agrees to pay in full all actual costs of defense, including but not limited to attorney fees, expert witness fees, costs of investigations in the preparation for trial professional time expended by principals and employees of the prevailing party and that the same shall be taxed as cost in said action and judgment entered thereon.

#### ARTICLE 19 – HAZARDOUS SUBSTANCES

Contractor shall state, in writing, on or about the date of substantial completion, that to the best of Contractor's knowledge, information, and belief, no asbestos, or hazardous substances (as defined by Section 29-22-101 (1) C.R.S, were used for, or in the construction of, this Project; provided however, that if a hazardous substance is commonly used in school construction, such substance may be specified by the Architect, and used in the Project by Contractor, provided Contractor has received both Architect's and Owner's prior written consent.

#### ARTICLE 20 – LOCAL LABOR

20.1 Colorado Labor. In compliance with Colorado Revised Statutes 8-17-101 and 8-17-102, Colorado labor shall be employed to perform at least eighty percent (80%) of the Work. Owner, in Owner's sole discretion after consultation with the State of Colorado, shall have the right to waive the eighty percent (80%) requirement if, in the Owner's sole discretion, there is reasonable evidence to demonstrate insufficient Colorado labor to perform the Work and if compliance with this Section 20.1 would create an undue burden that would substantially prevent a project from proceeding to completion. Owner shall not impose contractual damages on Contractor for a delay in the Work due to the Owner's decision to exercise this right. The term "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

20.2 Commodities or Services. In compliance with Colorado Revised Statutes 8-18-101, of any of the Work includes a contract for commodities or services, preference shall be given to a resident bidder (as defined in Section 20.3) against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

20.3 Resident Bidders. In compliance with Colorado Revised Statutes 8-19-102, preference shall be given to resident bidders against nonresident bidders from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. The term "resident bidder" means a person, partnership, corporation, or joint venture that is (a) authorized to transact business in Colorado and maintains its principal place of business in Colorado, or (b) authorized to transact business in Colorado, maintains a place of business in Colorado, and has paid Colorado unemployment compensation taxes in a least six (6) of the eight (8) quarters immediately prior to bidding on a construction contract for the Project.

#### ARTICLE 21 - NON-DISCRIMINATION CLAUSE

During the performance of Owner-Contractor Agreement, the Contractor shall not discriminate against any employee or



applicant for employment because of race, religion, color, gender, sexual orientation, national origin, veteran status or marital status. The Contractor shall take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, gender, sexual orientation, national origin, veteran status or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies or nondiscrimination.

#### ARTICLE 22 – EXPEDITING MATERIALS

The Contractor shall immediately after receipt of Notice to Proceed and approval of the list of subcontractors and material suppliers, place orders for all equipment, materials and supplies required for the work, if requested. He shall submit to the Architect evidence that such orders have been placed. Contractor shall verify completeness of each order upon acceptance of delivery and shall provide documentation to Owner and Architect that the order contains the correct products in type and quantity.

The Contractor shall exercise due diligence in seeing that all equipment, material and supplies are delivered well in advance of the time they are needed on the job; and he shall properly store and protect same at his expense either at the site or elsewhere as approved by the Architect. Payment for materials so stored will be made as provided for in these Supplementary Conditions.

#### ARTICLE 23 – SURVIVAL

Any provision in the Contract Documents to the contrary notwithstanding, the obligations of Owner and Contractor, each to the other, under this Owner-Contractor Agreement, shall survive the termination of this Owner-Contractor Agreement and shall continue to be binding upon the parties after such termination and until such time as full performance of such obligations shall have been made.

#### ARTICLE 24 – CRIMINAL BACKGROUND CHECK

Contractor shall complete a criminal background check on all employees and Subcontractor and Subcontractor's employees who work under this Owner-Contractor Agreement and who will have regular but not incidental contact with, or who will work in immediate proximity to students on a Cherry Creek School District campus. Contractor shall maintain records of such background checks during the term of the Owner-Contractor Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any unlawful sexual behavior or crime of violence involving a child will not be allowed to work on any District school campus, with or in immediate proximity to District staff or students, or have access to District information. Contractor shall provide proof of background checks upon request by the District. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks. Contractor is obligated to notify all workers, vendors and employees associated with their work on the Project of the above policies and prohibitions.

#### ARTICLE 25 – DRUG/ALCOHOL/TOBACCO FREE ZONES

Cherry Creek School District properties are drug, alcohol, and tobacco-free zones. In furtherance of this standard, the Contractor shall establish and maintain a safe and efficient work environment for all its employees, free from the effects of drugs, alcohol and tobacco. The Contractor shall strictly enforce this prohibition among its own employees and its subcontractors and their employees while they are on Owner's property. The Contractor and subcontractors shall require all of their employees to undergo drug and alcohol testing if an employee is involved in an accident on the Project site that may have been caused by human error that could be drug- or alcohol-related, or when a supervisor has reasonable suspicion or notice that an employee shows signs of possible intoxication, use, or being under the influence of drugs or alcohol. Contractor and subcontractor employees who violate these prohibitions shall be denied access to the Project site. Violation of this provision shall also constitute sufficient grounds for termination of the Contract or any subcontract by the Owner and payment by Contractor of any damages or penalties to the Owner.

END OF DOCUMENT