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## ARCHITECT'S ADDENDUM NO. 01

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**TO:** ALL HOLDERS OF BID DOCUMENTS

**DATE:** NOVEMBER 8, 2023

**PROJECT:** Grayson Elementary School  
GWINNETT COUNTY, GEORGIA

**OWNER:** GWINNETT COUNTY PUBLIC SCHOOLS  
53 GWINNETT DRIVE  
LAWRENCEVILLE, GEORGIA, 30046

**ARCHITECT:** CHAPMAN GRIFFIN LANIER SUSSENBACH ARCHITECTS, INC.  
2300 LAKE PARK DR SE, SUITE 165  
SMYRNA, GA 30080

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The items listed on the attached pages take precedence over referenced portions of Contract Documents for the project and, in executing a contract, shall become a part thereof.

Where any item called for in the Contract Documents is supplemented hereby, the original requirements shall remain in effect. All supplemental conditions shall be considered as added thereto.

Where any original item is amended, voided, or superseded hereby, the provisions of such items not so specifically amended, voided, or superseded shall remain in effect.

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### PART 1 - CHANGES TO THE DRAWINGS

- 1-1 All Architectural Floor Plan Sheets, are revised as follows:
- A. Revise Renovation Key Note R-07 to read  
R-07: Remove existing rubber base. Replace with new rubber base after painting.
- 1-2 SHEET A-2.11 – Enlarged Floor Plan – Building 2050 is revised as follows:
- A. Delete Renovation note R-11 from Art Classroom 7.113. New VCT has already been installed.
  - B. Add Renovation Note R-07 to the following spaces: Corridor 7.100, Corridor 7.105, Corridor 7.110, Corridor 7.130, Corridor 7.140, and Corridor 7.160.
  - C. Add existing floor clean-outs in floor areas noted with Reference Note R-08 in the following six classrooms: 7.116, 7.125, 7.133, 7.156, 7.164 and 7.173. Clean-outs are to be adjusted to be flush with new ceramic tile finish and metal covers replaced.
- 1-3 SHEET A-2.12 – Enlarged Floor Plan – Building 2010 is revised as follows:
- A. Add Renovation Note R-07 to the following spaces: Corridor 1.100, Corridor 1.110 and Corridor 1.115.
- 1-4 SHEET A-2.13 – Enlarged Floor Plan – Building 2020 is revised as follows:
- A. Add Renovation Note R-07 to the following spaces: Lobby 3.100, Security Vestibule 3.100A, Corridor 2.104 and Corridor 2.110.
- 1-5 SHEET A-3.11 – Enlarged Reflected Ceiling Plan – Building 2050 is revised as follows.
- A. Add one (1) 2'-0" by 2'-0" access panel to the ceilings in each of the following spaces: Boys 7.108, Girls 7.109, Custodian 7.141, Boys 7.146 and Girls 7.147. Location to be near new occupancy sensor and coordinated with GCPS's separate controls contractor, Frazier Controls.

- 1-6 SHEET A-3.12 – Enlarged Reflected Ceiling Plan – Building 2010 is revised as follows.  
A. Add one (1) 2'-0" by 2'-0" access panel to the ceilings in each of the following spaces: Boys 1.108 and Girls 1.113. Location to be near new occupancy sensor and coordinated with GCPS's separate controls contractor, Frazier Controls.

PART 2 - CHANGES TO THE SPECIFICATIONS

- 2-1 TABLE OF CONTENTS is revised as follows:  
A. Section 00700, General Conditions of the Contract for Construction, 11-8-23 is added to Revised Date Column.
- 2-2 SECTION 00700 – General Conditions of the Contract for Construction: is issued in its entirety, dated 11-8-23.  
A. Retainage is revised to 5%.

PART 3 - QUESTIONS

- 3-1 Question: Will note "R-04" be added to corridors?  
Answer: New Renovation Note R-07 is added to corridors by Addendum 1 requiring that rubber base be replaced after painting.
- 3-2 Question: It was observed in yesterday's Pre-Bid walk that new VCT has already been installed in Art Room 7.113.  
Answer: Renovation Note R-11 is deleted from this room in Addendum No. 1.
- 3-3 Question: Who will be responsible for cleaning and waxing of existing VCT and Terrazzo flooring in corridors?  
Answer: The contractor shall provide final cleaning of work areas as required in Specification Section 01700, Contract Close-out. Waxing of existing VCT and Terrazzo flooring scheduled to remain will be performed by GCPS personnel.
- 3-4 Question: How should cleanouts noted in General Note No. 2 be handled as there are none indicated on the drawings?  
Answer: Locations of floor clean-outs are added by Addendum No. 1.
- 3-5 Question: The note "R-02" noting accessories – we assume those wall mounted units would be limited to paper towel dispensers, toilet paper holders, etc., Stalls remain on walls?  
Answer: Correct. Toilet Partitions do not need to be removed and reinstalled for painting. Contractor shall protect, tape off and cleanly paint around wall mounted brackets.
- 3-6 Question: Reference Note R-06, Pencil sharpeners are not to be reinstalled?  
Answer: Pencil Sharpeners and the wood mounting backboards are not to be reinstalled.
- 3-7 Question: Please confirm that all base, regardless of how new is to be removed and replaced after we paint?  
Answer: All spaces noted with Renovation Notes R-04 or R-07 are to receive new base after painting.
- 3-8 Question: Please confirm that all items on the walls will be removed by teachers. All items such as shelving, tack boards, white boards and tack strips will remain on walls.  
Answer: The teachers will remove all personal items from the rooms at the end of the school year. Tack boards, markerboards and tack strips will remain and are to be protected, and painted around. Per Floor Plan General Note 10, Contractor shall remove and reinstall existing furniture and movable fixtures. This would include shelving unless it is permanently anchored to the walls.
- 3-9 Question: Will GCPS install marble thresholds at perimeter of new ceramic tile flooring at Classroom sinks where Renovation Note R-8 is indicated?  
Answer: GCPS has confirmed that they will install the marble thresholds. The work will be coordinated with the awarded Contractor and their tile installation.

GRAYSON ELEMENTARY SCHOOL  
CLASSROOM RENOVATIONS

00700-1

CGLS-23003

General Conditions of the Contract for Construction  
Revised 11-8-23  
Addendum No. 1

SECTION 00700

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

1.0 GENERAL CONDITIONS:

The following Gwinnett County Board of Education, "General Conditions of the Contract for Construction", Revision IX, dated 10/02/23, Articles 1 through 17 inclusive, Pages 1 through 45, are included herein, as part of this Contract.

END OF SECTION

GRAYSON ELEMENTARY SCHOOL  
CLASSROOM RENOVATIONS

00700-2

CGLS-23003

General Conditions of the Contract for Construction  
Revised 11-8-23  
Addendum No. 1

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# **GWINNETT COUNTY SCHOOL DISTRICT GENERAL CONDITIONS**

## **ARTICLE 1 GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

#### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consists of the Agreement between Owner and Contractor (hereinafter 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 other documents such as bidding requirements (advertisement or invitation to bid, instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding 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 Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-Subcontractor, or (2) between any persons or entities other than the Owner and 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 or by separate contractors.

### 1.1.5 **THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, 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, construction systems, standards and workmanship for the Work, and performance of related services.

### 1.1.7 **THE PROJECT MANUAL**

The Project Manual is the volume usually assembled for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

## 1.2 **EXECUTION, CORRELATION AND INTENT**

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

1.2.3 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 Contractor 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 intended results.

1.2.4 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.

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

**ARTICLE 2**  
**OWNER**

**2.1 DEFINITION**

2.1.1 The Owner is the Gwinnett County School District. The term "Owner" means the Owner or the Owner's authorized representative.

**2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

2.2.1 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.

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

2.2.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, twenty copies of Drawings and Project Manuals.

2.2.5 The foregoing is in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

**2.3 OWNER'S RIGHTS TO STOP THE WORK**

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing may order 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 the right for the benefit of the Contractor or any other entity, except to the extent required by Subparagraph 6.1.3.

**2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

hour period. If the Contractor within such second forty-eight hour period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the actual 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.

- 2.4.2 If, in the opinion of the Architect, it is evident that the Contractor has not completed or will not be able to substantially complete the Work in accordance with the contract documents due to default, negligence, or failure on the part of the Contractor, or their subcontractors, the Owner may, at its option, without prejudice, after the expiration of the second of two forty-eight hour written notices to the Contractor, complete certain portions of the Work as may be necessary, or augment the forces of the Contractor with additional manpower as may be required to complete the Work by the contracted completion date. In such case, an appropriate deductive Construction Change Directive shall be written, deducting from the contract price the actual costs incurred by the Owner to complete or augment the Work. Amount charged to the Contractor will be subject to the approval of the Architect. Such action, if taken by the Owner, shall not be interpreted by the Contractor as a termination of the contract as per Article 16 and the Contractor shall continue to carry out the Work or portions of the Work as may be required by the contract during this time frame.

### **ARTICLE 3** **CONTRACTOR**

#### **3.1. DEFINITION**

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

#### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

- 3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2; and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.



3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

### 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, unless Contract Documents give other specific instructions concerning these matters.

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 performing portions of the Work under a contract with the Contractor.

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

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

3.3.5 The Contractor shall make daily reports of activities onsite and shall submit copies of these reports with each monthly Application for Payment. Each daily report shall include the following information as a minimum:

- Project name
- Contractor
- Date
- Weather/temperature
- Number of persons present for each trade working on-site
- Number of Contractor's own forces present on-site
- Equipment present on-site
- Activity and work performed on-site
- Visitors on-site

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

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

### 3.6 **TAXES**

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

### 3.7 **PERMITS, FEES AND NOTICES**

- 3.7.1 The contractor shall secure and pay for all required governmental permits, fees, licenses, inspections, and utility costs (such as water metering devices) for the proper execution and completion of the work. The only exceptions shall be the payment of impact fees, permit fees, and development fees. Gwinnett County School District is exempt from payment of these particular fees on all school system construction projects.
- 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.
- 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.
- 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

### 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 against which the Contractor makes reasonable objection.
- 3.8.2 Unless otherwise provided in the Contract Documents:
- 3.8.2.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
  - 3.8.2.2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
  - 3.8.2.3 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 and not in the allowances;
  - 3.8.2.4 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 Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

### 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. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.
- 3.9.2 The Superintendent shall have supervised past projects of equal size and scope and have excellent performance references from the Owners for a minimum of three projects within a period of five years maximum. Contractors who and first and second apparent low bidders shall submit their appointed superintendent and project manager and references for review by the Owner and Architect within ten (10) days from the bid date and prior to contract signing. Owner and Architect shall have the right to reject any superintendent or project manager that does not, in their opinion have the required performance history to be in charge of this project.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

- 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

The schedule shall be a time-scaled, critical path method (CPM) network diagram showing critical path and float for each activity.

- 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. This schedule shall be submitted to the Architect prior to the first application for payment.
- 3.10.3 The Contractor shall conform to the most recently approved construction and submittal schedules.
- 3.10.4 The Owner shall be able to conduct classes without disruption or interference, move buses in and out on paved surfaces; and secure, heat, cool, light the building, and deliver food.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

- 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals including all underground utilities. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### **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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.8.
- 3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

- 3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.
- 3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect as given written approval to the specific 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.
- 3.12.10 Informational submittals upon which the Architect is not expected to take responsible action may be so identified in the Contract Documents.
- 3.12.11 When Professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.12.12 The Contractor shall provide upon the Architect's request a shop drawing or submittal for any item, component, or system being furnished under the contract.

### **3.13 USE OF SITE**

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

### **3.14 CUTTING AND PATCHING**

- 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner

or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP**

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

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

### **3.16 ACCESS TO WORK**

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

### **3.17 ROYALTIES AND PATENTS**

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

### **3.18 INDEMNIFICATIONS**

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) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by

them or anyone for whose acts they may be liable, the Indemnification obligation under this Paragraph 3.18 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' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation of approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

## **ARTICLE 4**

### **ADMINISTRATION OF THE CONTRACT**

#### **4.1 ARCHITECT**

- 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.
- 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.
- 4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contractor Documents shall be that of the former architect.

#### **4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

- 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- 4.2.2 The Architect shall visit the site at least once a week to inspect and familiarize himself with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on site inspections to check quality or quantity of the Work. On the basis of on-site inspections as an architect, the Architect will keep the

Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

- 4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with 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 of any other persons performing portions of the Work.
- 4.2.4 **Inspection Does Not Relieve Contractor.** Under the Contract Documents the Contractor has assumed the responsibility of furnishing all services, labor and materials for the entire Work in accordance with such documents. No provisions of this Article nor any inspection of the Work by the Owner, representatives of the Owner, engineers employed by the Architect, representatives of the Architect, or the Architect shall in any way diminish, relieve, or alter said responsibility and undertaking of the Contractor; nor shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents.
- 4.2.5 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
- 4.2.6 Based on the Architect's inspections 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.
- 4.2.7 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such 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, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- 4.2.8 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 with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect'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 Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 4.2.9 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- 4.2.10 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.
- 4.2.11 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- 4.2.12 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both the Owner and Contractor.
- 4.2.13 The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.
- 4.2.14 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor.
- 4.2.15 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **4.3 CLAIMS AND DISPUTES**

- 4.3.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract items, payment of money, extension of time or other relief with respect to the items 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. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

- 4.3.2 The Contractor shall assert claims solely on the basis of (a) principles of logic and (b) principles of law to which the Contractor, itself, subscribes. It shall not protest a decision or request a conference on the ground that a Subcontractor, materialman, or supplier has protested to the Contractor. Accordingly, the Contractor shall file no claim nor shall it make a request for a conference with the Owner regarding a claim except as it shall be for the purpose of asserting in the exercise of the Contractor's best judgment such views, requests, and legal propositions as it deems the Contractor is entitled to maintain independently of any right of any Subcontractor, materialman, or supplier against the Contractor.
- 4.3.3 Decision of Architect. Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within thirty (30) days after the claim is made, (4) forty-five (45) days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.
- 4.3.4 Time Limits on Claims. Claims by either party must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- 4.3.5 Continuing Contract Performance. Pending final resolution of a Claim unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 4.3.6 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:
- 4.3.6.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
  - 4.3.6.2 failure of the Work to comply with the requirements of the Contract Documents; or
  - 4.3.6.3 terms of special warranties required by the Contract Documents.

- 4.3.7 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after the first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.
- 4.3.8 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds. Claim shall be filed in accordance with the procedure established herein.
- 4.3.9 **CLAIMS FOR ADDITIONAL TIME**
- 4.3.9.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice shall be given within twenty-one (21) days. 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.
- 4.3.9.2 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 and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 4.3.10 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after first observance. The notice shall provide sufficient detail to enable the other party to

investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

- 4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.
- 4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.
- 4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.
- 4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to litigation. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### **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 Document as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to Architect to reply promptly 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.
- 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect make reasonable objection to such change.

### 5.3 **SUBCONTRACTURAL RELATIONS**

- 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require such Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by items of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall 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:
  - 5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract

agreements which the Owner accepts by notifying the Subcontractor in writing; and

- 5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
- 5.4.2 If the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted.

**ARTICLE 6**  
**CONSTRUCTION BY OWNER**  
**OR BY SEPARATE CONTRACTORS**

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

- 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum 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.

**6.2 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 of results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
  - 6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
  - 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.
  - 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.
- 6.3 **OWNER'S RIGHT TO CLEAN UP**
- 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from the waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

## **ARTICLE 7** **CHANGES IN THE WORK**

- 7.1 **CHANGES**
- 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
  - 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

- 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.
- 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 7.1.5 All Changes in the Work shall be executed in a timely manner.

## 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:
  - 7.2.1.1 a change in the Work;
  - 7.2.1.2 the amount of the adjustment in the Contract Sum, if any; and
  - 7.2.1.3 the extent of the adjustment in the Contract Time, if any.
- 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.
- 7.2.3 In making proposals for consideration of Change Orders, the allowance for overhead and profit combined, included in the total cost to the Owner, shall be based upon the following schedule:
  - 7.2.3.1 To the Contractor for Work which he performs with his own forces not to exceed twenty percent (20%) of his net additional cost.
  - 7.2.3.2 To a Subcontractor for Work which he performs with his own forces not to exceed twenty percent (20%) of his net additional cost.
  - 7.2.3.3 To the Contractor for Work which is performed by a Subcontractor not to exceed seven and one-half percent (7½%) of the amount due the Subcontractor.
- 7.2.4 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the



Contract Sum shall be actual net cost as confirmed by the Architect. 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.

- 7.2.5 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

### 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 and stating a proposed basis for 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:

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

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

7.3.3.3 in the case of Paragraph 2.4 above, actual costs incurred by Owner.

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

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

### 7.4 MINOR CHANGES IN THE WORK

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

**ARTICLE 8**  
**TIME**

**8.1 DEFINITIONS**

- 8.1.1 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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 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 term "working day" as used in the contract documents shall mean a day when premium pay is not required.

**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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.4 The Owner will require that the Contractor increase his work effort to achieve a six (6) day, ten (10) hour per day work week upon the determination that the construction progress is two (2) weeks behind the construction schedule as required by the General Conditions.

**8.3 DELAYS AND EXTENSIONS OF TIME**

- 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order 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 Paragraph 4.3.

**8.4 DELAYS DUE TO ADVERSE WEATHER**

8.4.1 Completion time will not be extended for normal bad weather. The time for completion as stated in the Contract Documents includes due allowance for days on which Work cannot be performed out-of-doors. For the purpose of this contract, the Contractor agrees that he may expect to lose working days to weather in accordance with the following table:

January-14 days	May-6 days	September-3 days
February-14 days	June-4 days	October-4 days
March-10 days	July-4 days	November-7 days
April-7 days	August-4 days	December- 10 days

8.4.2 If the total accumulated number of working days lost to the weather from the start of Work until the building is enclosed exceeds the total accumulated number to be expected for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of working days lost. No extension will be made for days of bad weather occurring after the building is enclosed. Furthermore, should a project fall behind the Contractor's original construction schedule, no extensions will be given for inclement weather days beyond the scheduled dry-in date plus any additional days due Contractor during such originally scheduled period. No changes in the Contract Sum will be authorized because of adjustment of Contract Time due to weather.

**ARTICLE 9**  
**PAYMENTS AND COMPLETION**

**9.1 CONTRACT SUM**

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

**9.2 SCHEDULE OF VALUES**

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a Schedule of Values properly allocated to various portions of the Work, prepared in the format shown in the project manual and supported by such data to substantiate its accuracy as the Architect may require. Upon receipt, the Architect/Engineer shall review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the Architect/Engineer may require from the Contractor. The purpose of such review and examination shall be to protect the Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data, or than is reasonable under the circumstances. If the Schedule of Values is not found to be

appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Architect/Engineer to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Architect/Engineer shall sign the Schedule of Values thereby indicating its informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. This Schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1 Application for payment with supporting data shall be delivered to the architect on or before the first day of the month. The form of the Application for Payment shall be DE Form 0263, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet with schedule of values, and DE Form 0264 Summary of Materials Stored Affidavit. This procedure shall be followed in order for the Architect to review the Work and approve payment in time for the Owner to make payment on the first Friday following the fifteenth of the same month. The Owner shall make progress payments on account of the Contract for 95% (5% will be retained) of the value of the Work properly performed, based on the Contract Sum, including Owner approved and signed Change Orders, and materials suitably stored at the site thereof, all as estimated by the Architect, less the aggregate of previous payments.

9.3.2 Provided that:

9.3.2.1 the Work is not behind schedule;

9.3.2.2 the Work is being performed in a satisfactory manner in compliance with the Contract as determined by the Architect; and,

9.3.2.3 there are no outstanding claims on the property; (Contractor shall submit, with payment application, a lien release form for each subcontractor requesting payments.)

Further payments shall be made in the amount of 100% of the value of the Work properly performed and of materials suitably stored at the site thereof.

9.3.3 If:

9.3.3.1 the Work falls behind the progress schedule by as much as 10%;

9.3.3.2 the Work is being performed in an unsatisfactory manner or is non compliant with the Contract Documents as determined by the Architect; or

9.3.3.3 there are outstanding claims on the property,

the Owner shall reinstate the 5% retainage on all progress payments to be paid while one or more of such conditions continues to exist. The Contractor shall be given written notice by the Architect of the reinstatement of the retainage. If the Contractor's actual

- progress becomes more than 10% behind the Contractor's anticipated progress, the Owner may direct the withholding of payments to the Contractor in amounts equal to the percentage behind the Contractor's anticipated progress, in addition to the 5% described in all Items of Article 9.
- 9.3.4 If the Contractor recovers all lost time and puts the Work back on schedule and remedies all breaches referenced in Subparagraph 9.3.3, further payments shall be as described in Subparagraph 9.3.2.
- 9.3.5 Such applications for payment shall not include amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- 9.3.6 If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably store 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 applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- 9.3.7 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **9.4 CERTIFICATES FOR PAYMENT**

- 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 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 inspection at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how

or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## 9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may decide not to certify payment and 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 Subparagraph 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 Subparagraph 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 decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, 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 because of:

9.5.1.1 Defective Work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probably filing of such claims;

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

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

9.5.1.5 damage to the Owner or another contractor;

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

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

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

## 9.6 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting

percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require such Subcontractor to make payments to Sub-subcontractors in 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 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.
- 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 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 There are not outstanding claims or liens on the property; (Contractor shall submit, with pay request, a lien release form for each subcontractor requesting payments. See Exhibit B.)

## **9.7 FAILURE OF PAYMENT**

- 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven (7) additional days' written 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 shut down, delay and start-up, which shall be accomplished as provided in Article 7.
- 9.7.2 The contractor shall be entitled to interest on any payment not made within the time limits set forth in the contract documents. The interest rate shall be 4 percent per annum, compounded daily.

## **9.8 SUBSTANTIAL COMPLETION**

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

- 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.
- 9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

## 9.9 PARTIAL OCCUPANCY OR USE

- 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.1 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.
- 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 written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining 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 the insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

9.10.3 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect 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. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.6.

9.10.4 Project close-out is to be obtained no later than 60 days after the date of Substantial Completion. If, in the opinion of the Owner and Architect, it is evident that the

Contractor is unwilling to bring the project to a close within the allotted time frame, and upon the issuance of two, 48 hour notices as set forth in Article 2, Paragraph 2.4.1, the Owner will then complete all unfinished work and/or assign a value to any incomplete work and documentation. The final application for payment will be adjusted accordingly.

- 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor of material supplier shall constitute a waiver of claims by the 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**

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
- 10.1.2 The Contractor shall comply with provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work arising out of and in the course of employment on Work under the Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their improper construction, maintenance, or operation. He shall erect and properly maintain at all times as required by the conditions and progress of the Work proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by the construction operations.

#### **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:
- 10.2.1.1 employees on the Work and other persons who may be affected thereby;
  - 10.2.1.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
  - 10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 10.2.4.1 The Contractor shall notify the Architect and the Owner in writing that explosives or other hazardous materials, equipment, or unusual methods must be used in the execution of the Work, indicating precisely what, how, where, and when explosives, hazardous materials, equipment, or unusual methods will be used.
- 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.
- 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### 10.3 **EMERGENCIES**

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

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

### 11.1 **CONTRACTOR'S LIABILITY INSURANCE**

- 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance

as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. In addition, the company furnishing the insurance shall have an A.M. Best Company rating of at least a Class "A" with a financial size of VI or greater. Insurance Certificates shall be accompanied by a letter stating company's current rating for verification, prior to acceptance by the Owner and execution of the formal Owner/Contractor agreement.

- 11.1.1.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
  - 11.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
  - 11.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
  - 11.1.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
  - 11.1.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
  - 11.1.1.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
  - 11.1.1.7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.
- 11.1.2 The insurance required by paragraph 11.1.1 shall be written for not less than any limits of liability listed below or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under Paragraph 3.18.
- 11.1.2.1 The Contractor agrees that, prior to the beginning of any Work by the Contractor or any Subcontractor, as the case may be, he (the Contractor) will furnish the following to the Owner for himself, and will obtain, and retain in his files for the duration of the construction period, like certificates for each Subcontractor. Certificate from insurance company showing coverage of Workmen's Compensation Insurance for the state of Georgia or a certificate from Georgia Workmen's Compensation Board showing proof of ability to pay compensation directly.
  - 11.1.2.2 Original certificate from insurance company showing coverage for the Contractor for the following:

- 11.1.2.3 Contractor's Protective and Public Liability Insurance: Taken out in the name of the Contractor.
  - 11.1.2.4 Personal Injury, including death - minimum limits of \$500,000 for each person and \$1,000,000 for each accident.
  - 11.1.2.5 Property Damage, minimum limits of \$300,000 for each accident and \$500,000 for aggregate of operations.
  - 11.1.2.6 Disposition: Certificate of insurance must be sent to Owner prior to commencement of Work. See following for endorsement required on this certificate.
- 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates shall contain a statement on every policy or certificate, as the case may be, that "The insurance company agrees that Policy No. \_\_\_\_\_ shall not be canceled, changed, or allowed to lapse until thirty (30) days after the Owner and the Architect have received written notice as evidenced by return receipt of registered letter."

## 11.2 **PROPERTY INSURANCE**

- 11.2.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site, to the full (100%) insurable value thereof. This insurance shall include the interest of the Owner and the Contractor in the Work and shall insure against the perils of fire, extended coverage, and shall include all risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief.
- 11.2.2 If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles.
- 11.2.3 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval and also portions of the Work in transit.
- 11.2.4 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured.
- 11.2.5 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

- 11.2.6 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- 11.2.7 Waivers of Subrogation. 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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 11.2.8 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interests may reach. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.
- 11.2.9 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.
- 11.2.10 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### 11.3 **PERFORMANCE BOND AND PAYMENT BOND**

- 11.3.1 Contractor shall furnish both a Performance Bond and Payment Bond, each in the amount of 100% of the Contract Sum, unless otherwise directed by the Owner. The surety shall be one which is authorized to do business in the State of Georgia and is listed on the current "Department of the Treasury Circular 570" with an underwriting limitation not less than the Contract Sum. In addition, company furnishing bonds shall have an A.M. Best Company rating of at least a Class "A" with a financial size of VI or greater. Bonds shall be accompanied by a letter stating company's current rating for verification, prior to acceptance by the Owner and execution of the formal Owner/Contractor agreement.

**ARTICLE 12**  
**UNCOVERING AND CORRECTION OF WORK**

**12.1 UNCOVERING 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 Document, it must, if required in writing by the Architect, be uncovered for the Architect's observation and be replaced at the Contractor's expense without change in the Contract Time.
- 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Works and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**12.2 CORRECTION OF WORK**

- 12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.
- 12.2.2 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 Subparagraph 9.8.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by

written notice from the Architect, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### 12.3 **ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

### 13.1 **GOVERNING LAW**

13.1.1 The Contract shall be governed by the law of the State of Georgia.

### 13.2 **SUCCESSORS AND ASSIGNS**

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



### 13.3 WRITTEN NOTICE

- 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.
- 13.3.2 Written notice transmitted via facsimile (FAX) shall NOT be accepted by the owner.

### 13.4 RIGHTS AND REMEDIES

- 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### 13.5 TESTS AND INSPECTIONS

- 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.
- 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect 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 the Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.
- 13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses.

- 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
- 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly, and where practicable, at the normal place of testing.
- 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**13.6 DRUG-FREE WORKPLACE ACT**

- 13.6.1 The Contractor acknowledges that he is fully aware of the contents and requirements of Chapter 24 of Title 50 of the Official Code of Georgia Annotated. The Contractor, upon submission of a bid or proposal in connection with the Contract, does thereby certify that he and his Subcontractors are in compliance with the Drug-Free Workplace Act.

**13.7 PUBLIC EMPLOYEE HAZARDOUS CHEMICAL AND RIGHT TO KNOW ACT OF 1988**

- 13.7.1 The Contractor acknowledges that it is fully aware of the contents and requirements of Chapter 22 of Title 45 of the Official Code of Georgia Annotated. The Contractor by submitting a bid or proposal does thereby certify that it and its Subcontractors are in compliance with the aforesaid provisions of the law.

**13.8 SECURITY AND IMMIGRATION COMPLIANCE**

- 13.8.1 Contractor shall comply with the provisions of the Georgia Security and Immigration Compliance Act of 2006 (O.C.G.A. §§ 13-10-90 & 13-10-91) and the Rules of the Georgia Department of Labor implementing the Georgia Security and Immigration Compliance Act of 2006 (Rules 300-10-1-.01 through 300-10-1-.09). Contractor's obligations under this section shall include, but not be limited to, the following:
  - A. Contractor agrees to execute and comply with the Contractor Affidavit and Agreement attached hereto as Affidavit A and incorporated herein by reference.
  - B. Prior to the execution of this Agreement, Contractor must check the appropriate category below identifying the number of people employed by the Contractor. In the event the number of employees employed by the Contractor changes such that it would change the category identified below, Contractor agrees to notify the Owner in writing of such change within ten (10) days.

Number of people employed by the Contractor (check one):

- 500 or more employees \_\_\_\_\_
- 100 or more employees \_\_\_\_\_
- Fewer than 100 employees \_\_\_\_\_

- C. Contractor agrees to insure that all subcontractors performing work under this Agreement will comply with the requirements of the Georgia Security and Immigration Compliance Act of 2006 (O.C.G.A. §§ 13-10-90 & 13-10-91) and the Rules of the Georgia Department of Labor implementing the Georgia Security and Immigration Compliance Act of 2006 (Rules 300-10-1-.01 through 300-10-1-.09). Contractor agrees to require all subcontractors performing work under this Agreement to identify in writing the number of people employed by the subcontractor pursuant to the categories set forth in subsection 8 of this section. Contractor further agrees to maintain records of the Subcontractor Affidavit(s) and to make such Subcontractor Affidavit(s) available for inspection by the Owner at any time. See attached Affidavit B.”
- 13.8.2 Contractor shall complete and submit a SAVE Affidavit/Affidavit Verifying Status of Public Benefit and a copy of a Secure and Verifiable Document. A sample SAVE Affidavit is attached hereto as Affidavit C.”

**13.9 EQUAL OPPORTUNITY**

- 13.9.1 The Contractor shall maintain policies of employment as follows:
  - 13.9.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
  - 13.9.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.”

**ARTICLE 14**

**14.1 TERMINATION BY THE CONTRACTOR**

- 14.1.1 If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to

terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner and the Architect. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 16.1.1.1 hereunder.

## **ARTICLE 15**

### **15.1 OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

- 15.1.1 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same;
- 15.1.2 In the event the Owner directs a suspension of performance under this Article 15, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:
- (1) demobilization and remobilization, including such costs paid to subcontractors;
  - (2) preserving and protecting Work in place;
  - (3) storage of materials or equipment purchased for the Project, including insurance thereon;
  - (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

## **ARTICLE 16**

### **16.1 TERMINATION BY THE OWNER**

- 16.1.1 The Owner may terminate this Contract in accordance with the following terms and conditions:
- 16.1.1.1 The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

- (1) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;
- (2) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
- (3) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
  - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
  - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
  - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 16.1.1.1 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.
  - (d) The total sum to be paid the Contractor under this Subparagraph 16.1.1.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment

16.1.1.2 If the Contractor does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. After final completion has been achieved, if any portion of the Contract Price, as it

may be modified hereunder, remains after the cost to the Owner of completing the Work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to this Subparagraph 16.1.1.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 16.1.1.1 and the provisions of Subparagraph 16.1.1.1 shall apply.

## ARTICLE 17

### 17.1 LEGAL JURISDICTION

This agreement is made and delivered in Gwinnett County, Georgia. The Contractor and the Owner consent and agree that the Superior Court of Gwinnett County, Georgia shall have jurisdiction and venue over any action between the parties listed in The Gwinnett County School District on Standard Form of Agreement Between Owner and Contractor.



**CAUTION: You should sign an original document which has this caution printed in red.**

GWINNETT COUNTY BOARD OF EDUCATION  
437 Old Peachtree Road, Suwanee, Georgia 30024

**Affidavit A**

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this Affidavit the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual firm, or corporation which is contracting with the Gwinnett County School District, has registered with and is participating in a federal work authorization program (any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603), in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performances of services pursuant to this contract with the Gwinnett County School District, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the Gwinnett County School District at the time the subcontractor(s) is retained to perform such services.

\_\_\_\_\_  
Employment Eligibility Verification  
User Identification Number

\_\_\_\_\_  
By:  
Title:  
Entity:

\_\_\_\_\_  
Date

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

**Affidavit B**

**SUBCONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this Affidavit the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual firm, or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ has registered with and is participating in a federal work authorization program (any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603), in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

\_\_\_\_\_  
Employment Eligibility Verification  
User Identification Number

\_\_\_\_\_  
By: Authorized Officer or Agent  
Subcontractor Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent  
of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer  
or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**Affidavit C**

**O.C.G.A. § 50-36-1(e)(2) SAVE Affidavit**

By executing this affidavit under oath, as an applicant for a public benefit, as referenced in O.C.G.A. § 50-36-1, from the Gwinnett County School District, the undersigned applicant verifies one of the following with respect to the application for a public benefit:

- 1) \_\_\_\_\_ I am a United States citizen.
- 2) \_\_\_\_\_ I am a legal permanent resident of the United States.
- 3) \_\_\_\_\_ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.

My alien number issued by the Department of Homeland Security or other federal immigration agency is: \_\_\_\_\_.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

\_\_\_\_\_.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal Statute.

Executed in \_\_\_\_\_ (City), \_\_\_\_\_ (State).

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed Name of Applicant

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_ DAY OF \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_