



CHIPPEWA

LOCAL SCHOOL DISTRICT

Board of Education Special Meeting

Board Office 56 N. Portage St.

Monday, April 27, 2026

8:00 a.m.

Meeting Minutes

I. OPENING

A. Call to Order :: Moment of Silence :: Pledge of Allegiance

B. Present: Dr. DeAngelis, Mrs. Fenn, Mr. Schafrath

RESOLUTION 200-26

C. Appoint _____ Mrs. Fenn _____, treasurer pro tempore, for the April 27, 2026 Special Meeting.

Motion by: _____ Mr. Schafrath _____ 2nd by: _____ Mrs. Fenn _____
Dr. DeAngelis yes, Mrs. Fenn yes, Mr. Schafrath yes **CARRIED**

II. SUPERINTENDENT'S AGENDA

RESOLUTION 201-26

A. Upon consideration to approve the design work agreement between Chippewa Local School District and Garmann Miller in the amount of \$25,800.00 for work at Chippewa Jr/Sr High School. Exhibit 1

Motion by: _____ Mrs. Fenn _____ 2nd by: _____ Mr. Schafrath _____
Dr. DeAngelis yes, Mrs. Fenn yes, Mr. Schafrath yes **CARRIED**

RESOLUTION 202-26

B. Upon consideration to approve the following resolution for the Determination of Urgent Necessity and Approving Contract with Beaver Contractors, Inc., for Restroom Improvements at Chippewa Jr/Sr High School. Exhibit 2

WHEREAS, the Board of Education (the "Board") of the Chippewa Local School District (the "District") finds that restroom improvements in the Chippewa Jr/Sr High School are necessary to protect the safety and security of students (the "Project"); and

WHEREAS, it is necessary for the Project to be completed prior to the commencement of the 2026/2027 school year in order to protect the safety and security of students and to maintain the District's operations and, therefore, pursuant to Section 3313.46 of the Ohio Revised Code, the Board determines there is an urgent necessity to approve a contract for the work required to complete the Project before the of the 2026/2027 school year; and

WHEREAS, Beaver Contractors, Inc. is an experienced construction contractor procured by the District through a "best value" selection process to serve as construction manager-at-risk for the addition and renovation of Chippewa Intermediate School that is in progress; and

WHEREAS, on APR 27, 2026, Beaver Contractors, Inc. submitted a proposal in the amount of Three Hundred and Eighty Thousand Dollars (\$380,000.00), a copy of which is attached hereto and incorporated herein by reference (the "Proposal"), to timely complete the restroom improvement Project for Chippewa Jr/Sr High School; and

WHEREAS, the Board finds the Proposal submitted by Beaver Contractors, Inc. for the Project is reasonable, and it is in the District's best interest to approve the Proposal in order to complete the work before commencement of the 2026/2027 school year.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Chippewa Local School District as follows:

- § 1. Pursuant to Section 3313.46 of the Ohio Revised Code the Board of Education of the Chippewa Local School District hereby finds and determines there is an urgent necessity to complete restroom improvements in the Chippewa Jr/Sr High School prior to the commencement of the 2026/2027 school year to protect the safety and security of students and to maintain the District's operations.
- § 2. The Board hereby approves the APR 27, 2026 Proposal submitted by Beaver Contractors, Inc. to timely complete the restroom improvement Project for Chippewa Jr/Sr High School, and approves entering into a contract with Beaver Contractors, Inc. in the amount of Three Hundred and Eighty Thousand Dollars (\$380,000.00) (the "Contract Sum") to complete the Project pursuant to the specifications, terms, conditions and other provisions set forth in the Proposal.
- § 3. The Board authorizes the Superintendent and the Treasurer to execute on behalf of the Board the contract and any supporting documents with Beaver Contractors, Inc. pursuant to Section 2, above, subject to final legal review.
- § 4. The Board hereby authorizes the Superintendent and Treasurer to enter change orders on behalf of the Board in a total amount not to exceed ten percent (10%) of the Contract Sum, and any change orders in excess of that aggregate amount will be brought to the Board for its approval.
- § 5. This resolution shall take immediate effect.
- § 6. The Board determines this Resolution was adopted at an open meeting pursuant to proper public notice and other requirements of Section 121.22 of the Ohio Revised Code.

Motion by: Mr. Schafrath 2nd by: Mrs. Fenn
Dr. DeAngelis yes, Mrs. Fenn yes, Mr. Schafrath yes **CARRIED**

IV. MOTION TO ADJOURN

Motion by: Mrs. Fenn 2nd by: Mr. Schafrath
Dr. DeAngelis yes, Mrs. Fenn yes, Mr. Schafrath yes **CARRIED**

Time: 8:08pm

NOTE: The next Regular Meeting will be held on Monday, May 11, 2026 at the Jr/Sr High School Auditorium beginning at 6:00 p.m.

APPROVED: 4-27-26 Special Meeting *Dr. DeAngelis*

PRESIDENT

DATE: 05/12/26

Ryan P. Doherty

TREASURER

DATE: 5-11-26

Linda H. Fenn

TREASURER PRO TEMPORE



Exhibit 1

April 20, 2026

Mr. Tim Adams
Superintendent
Chippewa Local School District
56 North Portage Street
Doylestown, Ohio 44230-1398

Re: Design Services for High/Middle School Restroom reprogramming/expansion

Mr. Adams:

We at Garmann Miller are excited to continue our work with Chippewa on your proposed restroom project. This is our understanding of the project:

PROJECT SCOPE

Our understanding based on our conversations and the shared plan sketch (attached) is that the district intends to construct additional restroom facilities at the High/Middle School by reprogramming the existing space under the canopy on the northwest side of the school. The area of the proposed enclosure is approximately 800 square feet. The spaces will include group restrooms for boys and girls, with the number of fixtures maximized. As currently conceived, the new area would match the existing building in construction methods and finishes. We understand that the district intends to contract directly with a construction manager to perform this construction work as quickly as possible, with the goal of having the restrooms usable by students in September of 2026. Given these factors, we understand the current Cost of Construction Budget to be \$380,000, excluding soft costs and contingencies.

SCOPE OF SERVICES

Garmann Miller will develop schematic design drawings for new restrooms in the intended location that explore configurations, construction methods and finishes that can reduce the Cost of Construction Budget. With your approval of the schematic design, we will complete full construction documents for use by the Construction Manager and suitable for submission for a general building permit. During the construction period, Garmann Miller will review product submittals and answer questions from the construction manager as needed. Visits to the site to monitor construction progress and quality can be made bi-weekly during the construction period.

SCHEDULE

Garmann Miller will begin this design work as soon as possible.

COMPENSATION

For the scope of services outlined above, Garmann Miller's fee will be \$22,800.



Additional costs for the project include building permits and construction testing. These costs may be paid directly by the owner or paid by Garmann Miller to be passed through on regular billing. The estimate for these additional services is \$3,000.

If this proposal is accepted by District, Garmann Miller will prepare an AIA B104 contract for review and signature by all parties.

Please contact us with any questions. We truly appreciate the opportunity to continue our relationship and look forward to serving the Chippewa School District!

Respectfully,

A handwritten signature in black ink, appearing to read "J. Ted Musielewicz".

J. Ted Musielewicz, AIA



BEAVER CONSTRUCTORS, INC.

April 22nd, 2026

Chippewa Local School District
56 Portage Street
Doylestown, OH 44230

Attn: Mr. Tim Adams
Re: Chippewa High School – Restroom Addition CMR Proposal

Mr. Adams,

Beaver Constructors, Inc. is pleased to submit this budgetary proposal to provide Construction Manager at Risk (CMaR) services for the restroom addition at Chippewa High School. Our services would include the overall management and coordination of the work, including all required labor, materials, equipment, and construction supervision necessary to complete the project in accordance with the available design information.

This proposal is intended solely for budgeting and planning purposes and is not to be construed as a final pricing proposal or a Guaranteed Maximum Price (GMP). Based on our current understanding of the project scope, the estimated budgetary cost of construction is \$380,000.00.

This budgetary estimate excludes on-site supervision, general conditions, contingencies, design fees, and any owner-held contingencies. Final pricing will be subject to further design development, clarification of scope, and mutual agreement on project assumptions and inclusions.

Thank you,

Garrett Mong
Project Manager
Beaver Constructors, Inc.



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of in the year
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Chippewa Local School District
56 North Portage Street
Doylestown, OH 44230

and the Construction Manager:
(Name, legal status, address, and other information)

Beaver Constructors, Inc.
2000 Beaver Place Avenue SW
Canton, Ohio 44706

for the following Project:
(Name, location, and detailed description)

Chippewa High School Restroom Addition
466 S Portage St, Doylestown, OH 44230

The Architect:
(Name, legal status, address, and other information)

Garmann Miller
1156 Dublin Rd #102
Columbus, OH 43215

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GENERAL CONDITIONS

EXHIBIT B PERSONNEL COSTS RATE SCHEDULE

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

To be developed with Construction Manager's assistance in accordance with Sections 3.1.2 and 4.1.1 herein.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

To be developed with Construction Manager's assistance in accordance with Sections 3.1.2 and 4.1.1 herein.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

.3 Substantial Completion date or dates:

(Paragraphs deleted)

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Tim Adams, Superintendent
Chippewa Local School District
56 North Portage Street
Doylestown, Ohio 44230
Phone: 330-568-6368
E-mail: Tim.Adams@chippewaschools.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Garmann Miller
1156 Dublin Rd #102
Columbus, OH 43215
Attention: Ted Musielewicz, AIA, NCARB
Phone: 614-502-4240

E-mail: rblatchford@cordoganclark.com

§ 1.1.10

(Paragraphs deleted)
[Intentionally Deleted]

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Ted Musielewicz, AIA, NCARB
Garmann Miller
1156 Dublin Rd #102
Columbus, OH 43215
Phone: 614-502-4240
E-mail: tmusielewicz@creategm.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Justin Leonhard, Senior Project Manager
Beaver Constructors, Inc.
2000 Beaver Place Avenue SW
Canton, Ohio 44706
Phone: 330-415-0981
E-mail: justin.leonhard@beaverconstructors.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Construction Manager shall follow the process set forth in Article 9 herein for subcontractor procurement.

§ 1.1.15 Other Initial Information on which this Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents

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User Notes:

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described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the General Conditions of the Contract shall be as set forth in A201-2017. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.3 The AIA Document A201-2017, General Conditions of the Contract for Construction, also referred to in this Agreement as the "AIA Document A201-2017", the "A201-2017", and the "General Conditions", consist of a modified AIA Document A201-2017, General Conditions of the Contract for Construction and are attached as Exhibit A to this Agreement.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall visit the Project site with the Architect, provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, provide its opinion of what the Construction Manager would reasonably expect to see in the program, schedule and construction budget requirements, and identify the deficiencies within these items.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; Subcontractor selection; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; Substantial, final and other milestone completion dates; and the occupancy requirements of the Owner. The Construction Manager shall immediately advise the Owner and Architect if at any time it appears that the schedule may be exceeded and make recommendations for corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.5.1 This Agreement is based upon the assumption that there will be only one GMP Amendment for the Project. The parties recognize, however, that during the Preconstruction Stages, or as may be set forth in Section 1.1.5 herein, they may decide to use more than one Guaranteed Maximum Price Amendment for the Project in order to accommodate phased construction with separate Substantial Completion dates for each phase. In that case, the Owner and the Construction Manager will execute a Guaranteed Maximum Price Amendment for each phase with each amendment after the first one supplementing the previous amendments. If the Project involves more than one phase, the requirements of this Agreement shall apply separately to each phase established, including but not limited to liquidated damages, retainage, contingency, final payment and commencement of warranties/guarantees, and the Contract Sums related thereto. The Construction Manager shall not be entitled to transfer unused contingency from one phase to one or more other phases.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall review the documents, provide its opinion of what Construction Manager would reasonably expect to see in the Documents, identify deficiencies within the Documents, and prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall also identify to Architect issues needing clarification in an effort to reduce assumptions and clarifications by the Construction Manager in the preparation of a

Init.

Guaranteed Maximum Price proposal. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

(Paragraphs deleted)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. In the absence of a mutual agreement regarding the timing, the Construction Manager shall, following the receipt of the 75% complete Construction Documents, submit the Guaranteed Maximum Price proposal to the Owner and Architect within 21 days following the receipt thereof. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. In arriving at the Guaranteed Maximum Price, the Construction Manager shall engage in an "open book pricing method" in which the Construction Manager provides all books, records, documents, and other data in its possession pertaining to the establishment of the Guaranteed Maximum Price, including the bidding and pricing, as well as the performance of the Work.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include material changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; subcontracted and self-performed Work; alternates; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion and final completion upon which the proposed Guaranteed Maximum Price is based along with an updated Project and proposed construction schedule; and
- .5 A date not sooner than thirty (30) days from the Owner's receipt of the proposal by which the Owner must accept or reject the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order subject to Owner's concurrence which shall not be unreasonably withheld. The contingency shall be identified in the schedule of values and shall be adjusted, as the case may require, reflecting net savings or net losses resulting from the award of Subcontracts. Construction Manager shall inform the Owner for those items the Construction Manager intends to allocate to the contingency. As part of the Construction Manager's monthly pay application, the Construction Manager shall provide to the Owner a monthly contingency report detailing all expenditures of the Construction Contingency and the remaining balance available. The Construction Manager may not use contingency related to any self-performed Work or Work performed by a related party. It is understood that any contingency that is unused following final completion of the Work shall belong to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct a minimum of weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017 consistent with the timelines set forth in the Guaranteed Maximum Price Amendment.

§ 3.3.2.3 Reports

The Construction Manager shall record the progress of the Project. On a bi-weekly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion, activities in progress and expected completion, activities to be started or finished in the upcoming two weeks (including but not limited to workforce size and total resource hours associated with those activities), recommendations for adjusting the construction schedule to meet milestone completion, Substantial Completion and final completion dates, and other information required by the Architect or Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Construction Manager shall assist the Owner and Architect regarding requirements for and limitations on the Project, including developing a written program setting forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 [Intentionally Deleted].

§ 4.1.3 The Owner, with the assistance of the Construction Manager, shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness if reasonably necessary for the Project. The Owner shall also furnish any other information or services under the Owner’s control, reasonably necessary for the Project

and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control reasonably necessary for the Project and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish its own legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

If not already identified in this Agreement, the Owner shall retain an Architect to provide professional design services for the Project. The Construction Manager shall advise the Owner of any services of the Architect or other professionals that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager, upon request, with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 5.1.1.1 Preconstruction Fee: \$Zero

§ 5.1.1.2 Preconstruction Stage Personnel Costs:

§ 5.1.1.3 Preconstruction Stage Reimbursable Expenses:

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit B
(Table deleted)

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

(Paragraph deleted)

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

N/A % N/A

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

One and fifty-five hundredths percent (1.55%) of the Cost of the Work plus contingency used

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

As set forth in Section 6.1.2 herein

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases or decreases in the cost of its portion of the Work:

10% overhead and 5% profit. The Construction Manager is not entitled to recover overhead and profit for Work self-performed by the Construction Manager or Work performed by Construction Manager as a Subcontractor at any tier.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100%) of the cost listed by the current edition of the EquipmentWatch's *AED Green Book* heavy equipment rental rates, or if no such cost is listed, the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

If the Construction Manager shall fail, neglect, and/or refuse to attain Substantial Completion of the Work by the date set

forth in the Guaranteed Maximum Price Amendment, Construction Manager shall be subject to liquidated damages (not a penalty) at the rate set forth below per calendar day for the total number of days the Work is delayed beyond the Substantial Completion date:

LIQUIDATED DAMAGES

Contract Amount	Dollars Per Day
\$1.00 to \$100,000.00	\$250.00
\$100,000.01 to \$500,000.00	\$500.00
\$500,000.01 to \$2,000,000.00	\$1,000.00
\$2,000,000.01 to \$5,000,000.00	\$2,000.00
\$5,000,000.01 to \$10,000,000.00	\$2,500.00
More than \$10,000,000.00	\$3,000.00

Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work and shall be in addition to any other remedies available to the Owner. The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due Construction Manager. Any liquidated damages not so deducted shall be payable by the Construction Manager to the Owner upon demand. Liquidated damages are not intended to compensate the Owner for any damages the Owner incurs on account of any claims attributable to the Construction Manager that are brought by others, including Separate Contractors.

§ 6.1.7 Other:

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

§6.1.7.1 Construction Manager's contingency shall not exceed Two percent (2.0%) of the Cost of the Work.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

As may be set forth in the Guaranteed Maximum Price Amendment.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or, subject to Owner's approval, subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Reasonable legal costs that are directly incurred by the Construction Manager in resolving disputes and claims for the Project by a Subcontractor and/or a lower tier Subcontractor (and not those arising from disputes solely between the Owner and Construction Manager) provided that: (i) the legal costs are approved in advance by Owner, which approval will not be unreasonably withheld; (ii) the necessity for the legal costs are not the result of the Construction Manager's negligence, willful misconduct or failure to fulfill a specific responsibility of the Construction Manager; (iii) the legal costs are not subject to the Construction Manager's indemnification obligations toward the Owner and/or are otherwise covered by insurance, sureties or others; and (vi) such costs shall not be included in the calculation of the Construction Manager's Fee.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017 to the extent (i) not caused by the Construction Manager, a Subcontractor, or anyone for whom either is responsible or (ii) not capable of being prevented through timely notice of any unsafe condition to the Owner.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others, and provided further that any absence of collectible insurance is not due to Construction Manager's breach of the Contract Documents for providing insurance.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall follow the requirements as prescribed by Ohio Revised Code 153.501, 153.502 and OAC 153:1-7-01 for the prequalification and selection of Subcontractors. The Construction Manager shall establish criteria for prequalifying prospective bidders on subcontracts and submit the criteria to the Owner for approval. The Construction Manager's criteria for prequalifying Subcontractors shall minimally include the prospective Subcontractor's experience, financial condition, conduct and performance on previous contracts, facilities, management skills, ability to execute the associated subcontract properly, and proof of compliance with licensure requirements. The Owner may require additional criteria as a condition of its approval. For each subcontract, the Construction Manager shall identify at least three prospective and pre-qualified bidders, unless fewer than three are available and shall submit the bidders to the Owner for approval. The Owner may eliminate bidders that the Owner determines do not meet the prequalification criteria and may eliminate such unqualified bidders. The Owner may also rely on the Construction Manager's representations that prospective bidders meet the prequalification requirements. The Construction Manager shall solicit bids from each prequalified bidders under an open book pricing method. If the Construction Manager or a related party intend to bid on subcontracted work (with the Owner's prior consent), the Construction Manager or related party must submit its bid at least four hours before the date and time established for opening Subcontractor bids, and the Construction Manager and related party shall ensure strict separation of the personnel involved with bidding on the Work from the personnel otherwise involved with the Project. The Construction Manager may not self-perform any Work or allow any Work to be performed by a related party if the Construction Manager has not also solicited Subcontractor bids for such Work unless the requirements for soliciting Subcontractor bids is waived by Owner. The Construction Manager or related party shall meet in all respects the bidder prequalification criteria approved by the Owner. The Construction Manager shall complete the prequalification process for each subcontract no later than 10 days before the Construction Manager intends to solicit bids for that subcontract unless the Owner agrees otherwise in writing. If an award is made to a related party, that related party will be a Subcontractor. The requirements of this Section do not apply to the Construction Manager's management and administration of the entire Work, including administration of subcontracts; general conditions work; and the balance of the Work under a subcontract terminated by the Construction Manager for cause and the Construction Manager obtains the Owner's written approval before commencement of that portion of the subcontract

Work. The Construction Manager's responsibility for Subcontractors will not be relieved or diminished on account of the Owner's participation in the process described in this Section.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) was pre-qualified to perform that portion of the Work in accordance with Section 9.1 herein; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.1.2 The Construction Manager shall not substitute a subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. The Construction Manager shall notify the Owner and the Architect of the proposed substitution of a subcontractor, person, or entity a minimum of 10 days prior to the proposed change. The Owner may require the Construction Manager to change a subcontractor previously approved, and Construction Manager may request an equitable adjustment in its Contract Sum.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 The Owner may authorize the Construction Manager to engage a design-assist firm to perform a scope of design-assist services and associated Work agreed upon by the Owner and Construction Manager. The Construction Manager may request authorization to engage a design-assist firm at any point in the Project that is appropriate or necessary to facilitate the Project's design and construction. The Construction Manager may not provide design-assist services directly or through a Construction Manager related party. A design-assist firm that is retained to provide services during the Construction Stage shall be a Subcontractor and shall be subject to the selection process in Section 9.1.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. It is understood that the Owner's auditor may be an employee of the Owner or an independent auditor retained by the Owner.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, including supporting documentation as the Owner and Architect may require, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. The Construction Manager shall utilize AIA Document G-702GMP, Application and Certificate for Payment for Cost of the Work Projects with a Guaranteed Maximum Price unless a different form is designated by Owner or Architect.

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

§ 11.1.3 Provided that an Application for Payment, including supporting documentation, is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the

application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty-one (31) days after the Architect receives the Application for Payment.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager shall utilize AIA Document G-703CW-2021 in submitting its schedule of values unless a different form is designated by Owner or Architect.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Retainage shall be governed by the requirements of Ohio Revised Code Chapter 153.

(i) Labor. Payments for labor performed will be at the rate of ninety-six percent (96%) of the amount set forth in the Construction Manager's Application for Payment and approved by the Architect. No Subcontract shall be paid by Construction Manager at a rate lower than the rate being paid to the Construction Manager under this Section 11.1.8.1(i).

(ii) Materials and Equipment. There shall be paid to the Construction Manager a sum at the rate of 92 percent of the invoice costs, not to exceed the scheduled value, of material delivered on the site of the Work, or suitably stored off site. The balance of the scheduled value will be payable when the materials and equipment are incorporated into the Project and accepted by Owner. The Construction Manager shall be paid at the rate of 100% of the scheduled value for materials incorporated into the Project. Incorporated into the Project means such materials and equipment are installed and conform to the requirements of the Project. Partial or full payment to the Construction Manager(s) for material, equipment, or Work in place shall not start any applicable warranty period.

(iii) It shall be within the Owner's discretion to determine the type of investment account for placement of retainage, and interest earnings payable to the Construction Manager on the retainage is limited to just interest accrued on that retainage in the investment account selected by Owner.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Preconstruction Phase Compensation, Construction Manager's Fee

§ 11.1.8.2

(Paragraphs deleted)

[Intentionally Deleted]

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Owner may continue to withhold retainage in an amount reasonably necessary to assure final completion of the Work.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 [Intentionally Deleted].

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.1.13 If all or part of any funds of the Construction Manager that are held by the Owner, whether it be retainage, escrowed funds or otherwise, should be attached, garnished or levied upon under any order of court, or if the delivery thereof shall be stayed or enjoined by any order of court, or if any other writ, order, judgment, or decree shall be made or entered by any court affecting the held funds, or any part thereof, the writ, order, judgment, or decree so entered or issued, whether with or without jurisdiction, Owner shall provide Construction Manager with notice of same so that Construction Manager may seek, at its sole cost and expense, an appropriate protective order or other appropriate relief which Construction Manager shall do so promptly. If the Construction Manager fails to secure a protective order or other appropriate relief by the date by which the Owner is required to comply with the attachment, garnishment, levy, writ, order, judgment, or decree, or if the Construction Manager fails to act promptly, the Owner may obey and comply with such attachment, garnishment, levy, writ, order, judgment, or decree. Owner shall not be liable to and shall be held harmless by the Construction Manager, its successors, or assigns related to such compliance, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside, or vacated.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

(Paragraph deleted)

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

N/A % N/A

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any dispute between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase

(Paragraphs deleted)

services.

§ 12.2 Binding Dispute Resolution

The method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

(Paragraphs deleted)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.1.7 Termination for Cause by Owner Prior to Establishment of Guaranteed Maximum Price

§ 13.1.7.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement for cause in accordance with Section 14.2 of A201-2017. Compensation to the Construction Manager for services performed during the Preconstruction Phase and for Work performed after the commencement of the Construction Phase, but prior to the execution of the Guaranteed Maximum Price Amendment, shall be governed by Section 14.2 of A201-2017. Should the Owner terminate this Agreement for cause under this Section 13.1.7, but that cause be subsequently found insufficient to support termination, the termination shall be deemed one of convenience under Section 13.1.3.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201-2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

Compensation to the Construction Manager shall be governed by Section 14.4 of the General Conditions

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower

coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
None	

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201-2017 and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide a performance bond and payment bond as required by Ohio Administrative code 153:1-4-02. Each surety under the bonds shall be licensed to conduct business in Ohio and satisfactory to the Owner.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given *(Paragraphs deleted)*

by e-mail provided that the e-mail is sent to the e-mail address of a party's designated representative. An e-mail notice shall be deemed received when the message enters the recipient's inbox, except that if the message enters the recipient's inbox after 5:00 pm in the Eastern time zone or on a Saturday, Sunday or legal holiday observed by the government of the United States, then it shall be deemed received the next business day.

§ 14.5 Other provisions:

§ 14.5.1 The Construction Manager shall assist the Owner and Architect in connection with the Architect's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project. The Construction Manager shall assist the Architect with the Architect's responsibility in making usual and customary presentations before any governmental or quasi-governmental agency having jurisdiction over the Project.

§ 14.5.2 The Owner will provide to Contractor, upon request, a completed State of Ohio Sales and Use Tax Construction Contract Exemption Certificate.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager except when the amendment is through a Construction Change Directive or some other mechanism under the Contract Documents that allows for a modification without the Construction Manager's signature.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price (modified)

.2

(Paragraphs deleted)

Modified AIA Document A201™-2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

(Table deleted)

attached to this Agreement as Exhibit A.

.3 Exhibit B, Personnel Costs Rate Schedule.

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



OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

John Gaetano, Vice President

(Printed name and title)

(Printed name and title)

CERTIFICATE

The undersigned, Treasurer of the Board of Education certifies that the money required to meet the obligation of the Owner during the current fiscal year under the Agreement has been lawfully appropriate by the Board of Education for such purposes and are in the treasury or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Section 5705.41 of the Revised Code.

Dated: _____



Init.

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User Notes:

(1127697970)



AIA Document A201® – 2017

General Conditions of the Contract for Construction

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

Chippewa High School Restroom Addition
466 S Portage St, Doylestown, OH 44230

THE OWNER:
(Name, legal status and address)

Chippewa Local School District
56 North Portage Street
Doylestown, OH 44230

THE ARCHITECT:
(Name, legal status and address)

Garmann Miller
1156 Dublin Rd #102
Columbus, OH 43215

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.6

Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, 15.4

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4

Certificates of Insurance

9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5
Claims, Definition of
15.1.1
Claims, Notice of
1.6.2, 15.1.3
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5
Claims for Additional Time
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7
Claims Subject to Arbitration
15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5
Commencement of the Work, Definition of
8.1.2
Communications
3.9.1, 4.2.4
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, 6

Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.4
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 5.4.2, 11.5, 14
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2
Contractor's Construction and Submittal Schedules
3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,

10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
 3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
 3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
 3.2
Contractor's Right to Stop the Work
 2.2.2, 9.7
Contractor's Right to Terminate the Contract
 14.1
Contractor's Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
 3.9, 10.2.6
Contractor's Supervision and Construction Procedures
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
 1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
 1.5, 2.3.6, 3.11
Copyrights
 1.5, 3.17
Correction of Work
 2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
 1.2
Cost, Definition of
 7.3.4
Costs
 2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
 3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
 3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
 6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
 8.1.2
Date of Substantial Completion, Definition of
 8.1.3
Day, Definition of
 8.1.4
Decisions of the Architect
 3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
 9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
 2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
 1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
 3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
 1.7
Disputes
 6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
 3.11
Drawings, Definition of
 1.1.5
Drawings and Specifications, Use and Ownership of
 3.11
Effective Date of Insurance
 8.2.2
Emergencies
 10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, 15.2.5
Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
 (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
GENERAL PROVISIONS
 1
Governing Law
 13.1
Guarantees (See Warranty)
Hazardous Materials and Substances
 10.2.4, 10.3
Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
 3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3
Information and Services Required of the Owner

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,
11

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

**Means, Methods, Techniques, Sequences and
Procedures of Construction**

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2, 2.2.3, 2.2.4, 2.5, 3.2.4,
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,
8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5,
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4
Occupancy
2.3.1, 9.6.6, 9.8
Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4
Owner, Information and Services Required of the
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Owner's Authority
1.5, 2.1.1, 2.3.3.2.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.5, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.4
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2, 14.4
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, 9.9
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3
Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Payments, Progress
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Permits, Fees, Notices and Compliance with Laws
2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, 11.2
Proposal Requirements
1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor

3.12
Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
 3.17
Rules and Notices for Arbitration
 15.4.1
Safety of Persons and Property
 10.2, 10.4
Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
 3.12.3
Samples, Shop Drawings, Product Data and
 3.11, 3.12, 4.2.7
Samples at the Site, Documents and
 3.11
Schedule of Values
 9.2, 9.3.1
Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
 6.1.1
Shop Drawings, Definition of
 3.12.1
Shop Drawings, Product Data and Samples
 3.11, 3.12, 4.2.7
Site, Use of
 3.13, 6.1.1, 6.2.1
Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
Specifications, Definition of
 1.1.6
Specifications
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
 15.1.2, 15.4.1.1
Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
 5.1.1
SUBCONTRACTORS
 5
Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
 6.1.1, 11.3
Substances, Hazardous
 10.3
Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Substantial Completion, Definition of
 9.8.1
Substitution of Subcontractors
 5.2.3, 5.2.4
Substitution of Architect
 2.3.3
Substitutions of Materials
 3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
 5.1.2
Subsurface Conditions
 3.7.4
Successors and Assigns
 13.2
Superintendent
 3.9, 10.2.6
Supervision and Construction Procedures
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1
Surety
 5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7
Surety, Consent of
 9.8.5, 9.10.2, 9.10.3
Surveys
 1.1.7, 2.3.4
Suspension by the Owner for Convenience
 14.3
Suspension of the Work
 3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
 5.4.1.1, 14
Taxes
 3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
 14.1, 15.1.7
Termination by the Owner for Cause
 5.4.1.1, 14.2, 15.1.7
Termination by the Owner for Convenience
 14.4
Termination of the Architect
 2.3.3
Termination of the Contractor Employment
 14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary and reasonably inferable for the proper execution and completion of the Work by the Contractor, whether or not expressly shown or described. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract

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

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

§ 1.2.4 The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined or (2) the titles of numbered articles.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including" when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter. All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of the Contract.

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

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

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

§ 1.5.3 The Owner alone owns all Project-related documents, including those in electronic form, prepared by the Contractor and Subcontractors, and every right, title, and interest therein from the moment of creation. The Contractor must execute and deliver and cause its employees and agents and all Subcontractors to execute and deliver to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Contractor's documents. The Contractor may retain copies, including reproducible copies, of the Contractor's documents for information, reference, and performance of the Work. The submission or distribution of the Contractor's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contractor's documents. Any unauthorized use of the Contractor's documents shall be at the sole risk of the entity making the unauthorized use.

§ 1.6 Notice

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

§ 1.6.2 Notice of Claims as provided in Section 15.1.2 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The Owner and Contractor acknowledge and reasonably expect that they will provide or cause to be provided electronic files to each other, including, but not limited to, Revit, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files"), and that they will receive Electronic Files from and provide Electronic Files to the Architect, to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry. The Owner and Contractor acknowledge that the use of Electronic Files involves risks not generally associated with the use of paper documents. Those risks include, for example and without limitation, alteration (inadvertent or intentional) and deterioration, both of which may not be readily apparent through casual observation. The Owner and Contractor do not warrant to each other that any Electronic File they provide to each other or that they receive from or provide to the Architect (1) was not altered through transmission; (2) is compatible with the recipient's computer system or software; (3) will not be altered through degradation of the recipient's storage media; or (4) is suitable for conversion/translation to and subsequent use in a system or format other than the Electronic File's original system or format. Before relying on any Electronic File it receives, the recipient is responsible for verifying that the Electronic File was not altered through transmission, degradation of the recipient's own storage media, or other causes. If the recipient of an Electronic File converts/translates the Electronic File from its original system or format to an alternate system or format, the recipient assumes the risk that the conversion/translation created errors in the converted/translated file. Owner and Contractor shall each maintain and operate its own computer systems and storage media in a commercially reasonable way and take reasonable steps to prevent errors in and deterioration of the Electronic Files it creates, provides, and receives. In the event of a discrepancy between information contained in a paper version of a document and the Electronic File of that document, the paper version will govern. This Section does not relieve the Contractor of its responsibility for the preparation, completeness, or accuracy of the Contractor's documents. The parties shall also follow any other protocols governing the development, transmission, exchange and use of Instruments of Service, Electronic Files or any other information or documentation in digital form as may be agreed upon in writing by the Owner, Contractor and Architect.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to matters requiring the Owner's approval or authorization provided that the representative shall have only such authority as is expressly authorized by the Owner's governing board. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor a notice of commencement as may be required by Ohio Revised Code Chapter 1311. The Contractor shall provide a copy of any notice of commencement to its Subcontractor and any known Sub-subcontractors. The Contractor will immediately deliver to the Architect and Owner copies of notices of furnishing that Contractor receives.

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall, if necessary for the execution of the Work, furnish surveys or other information describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to correct such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. If such default or neglect results in an emergency and/or a threat to the safety of persons or property, the Contractor shall immediately commence and continue without interruption using best efforts to correct such default or neglect upon receipt of written or oral notice thereof or otherwise becoming aware, and if Contractor fails to do so, then Owner may correct such default or neglect. The Owner or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The rights of Owner under this Section are in addition to the rights of Owner as set forth in Articles 12 and 14 herein.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.1.4 The Contractor shall attend preconstruction meetings with representatives of the Architect and Owner. The Contractor shall have any of its Subcontractors and suppliers at the meeting as necessary or as requested by the Architect. The preconstruction meetings will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Project. The date, time, and place of the meetings will be

designated by the Owner.

§ 3.1.5 If the Project is designed and constructed with a Sustainable Objective identified in the Agreement for the Project, the Contractor shall perform the Work for which the Contractor is responsible in furtherance of the Sustainable Objective and shall provide submittals certifying achievement of the Sustainable Objective criteria for verification by a third party, and the submittals shall be provided in accordance with any deadlines set forth in the schedule and Contract Documents. In the absence of schedules or deadlines, the Contractor will submit the documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or Separate Contractors. The Contractor shall include with any requests for substitution any potential effect the substitution may have on the Sustainable Objective. The Contractor grants to the Architect and Owner the right to submit the Contractor's submittals to the rating system as required in order to achieve or maintain the Sustainable Objective.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. By executing the Agreement, the Contractor certifies that it has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, including but not limited to utilities, access restraints to the Project site and access restraints to neighboring facilities, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor, for determining that the Work is constructible, for determining if the Work of the Contractor is coordinated in the Contract Documents with the Work of Separate Contractors under a separate contract with the Owner, and for verifying that field conditions, including the Work of other Contractors, are consistent with the information in the Contract Documents and ready for Work and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require, and proceeding without reporting such nonconformity shall make the Contractor responsible for any costs and expenses incurred by the Contractor related to the claimed deficiencies.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15, and the time limit for initiating a Claim begins to run on the date of the Architect's issuance. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract

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

§ 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents and/or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.6 If the Architect does not specify a form for Contractor to submit a request for information, then Contractor shall utilize the AIA Document G-716.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors, including Sub-subcontractors of any tier, and Contractor shall be responsible for ensuring the performance of the Work regardless of whether the work is performed by the Contractor, a Subcontractor or Sub-subcontractors of any tier. The Contractor shall be responsible for scheduling and coordinating the work of its Subcontractors and suppliers. This section shall apply with equal force and effect regardless of whether any Subcontractors are selected by the Contractor or assigned by the Owner.

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, storage and other facilities and services necessary for proper execution and completion of the Work, including but not limited to field offices, toilets, other trailers, or buildings, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall use best efforts to conserve any utilities furnished by Owner.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contractor shall provide all data, information, regulations and certifications required by Architect and Owner in evaluating the proposed substitution. The Owner shall be entitled to reimbursement from the Contractor for amounts paid for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be of good workmanship and will be free from defects, except for those inherent in the quality of the Work the Contract

Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper alterations to the Work except when executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If Contractor disputes the Architect's determination or recommendation, the Contractor may submit a Claim as provided in Article 15, and the time limit for initiating a Claim as set forth in Section 15.1.2 herein related to subsurface, concealed or unknown conditions begins to run on the date the Architect issues its determination or recommendation.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum, not in the allowances, and shall not be chargeable against the allowance; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. The Contractor shall obtain a Change Order before incurring any costs in excess of an allowance.

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 If not already approved in advance by the Owner, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner or Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The Owner shall have the right to require the Contractor to remove a superintendent from the Project whose performance is not satisfactory, and to replace the superintendent with a superintendent who is satisfactory to the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 If not already provided to the Owner in accordance with the Agreement, the Contractor, promptly after execution of the Agreement or Guaranteed Maximum Price Amendment, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the dates of Substantial Completion and final completion; (2) an apportionment of the Work by construction activity; (3) identifying the critical path of the Work; (4) a graphic representation of activities and events that will occur during performance of the Work; (5) identifying the crew size and total resource hours for each activity in the schedule; (6) identifying disruptions and shutdowns; and (7) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. If the schedule is not accepted by the Owner and Architect, the Contractor shall promptly revise the schedule in accordance with the recommendations of the Owner and Architect and resubmit to Owner and Architect for acceptance. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.1.1 In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The Contractor is cautioned that weekend or overtime work, if required to avoid such noise and vibration, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Owner prior to the occurrence. Weekend and overtime Work shall be reflected in the construction schedule.

§ 3.10.1.2 In the event that critical path activities, schedule milestone completion dates, Substantial Completion or final completion dates will not be met, Contractor shall devise an affirmative time recovery plan acceptable to the Owner and Architect to avoid or minimize any delay. Such a plan may include, without limitation, increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work, increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof, rescheduling of activities to achieve maximum practical concurrency of Work efforts and, if appropriate, time extensions.

§ 3.10.1.3 Unless otherwise provided in the Agreement, or unless different intervals are agreed to by the Owner, the Contractor shall update the construction schedule bi-weekly consistent with time limits established under the Contract Document and shall obtain the Owner's and Architect's approval. The updated construction schedule shall show all changes to the previous schedule. The updated construction schedule shall be signed by the Contractor and shall serve as an affirmation that the Contractor agrees to and can meet the requirements of the updated construction schedule.

§ 3.10.1.4 The Contractor shall participate with Separate Contractors and the Owner in reviewing their construction schedules and the Contractor shall coordinate its Work with the activities of the Owner's own forces and of Separate Contractors. The Contractor shall make any revisions to the construction schedule in order to coordinate its Work as required by this Section.

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

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, the approved Shop Drawings, Product Data, Samples, and similar required submittals, accurate, current and reproducible as-built drawings (showing Work as actually performed, variations from the original Contract Documents and the location of any concealed and/or buried items, utilities, mechanical or electrical systems and components), and accurate records of any changes made to the Specifications, noting particularly any variation from manufacturer's installation instructions and recommendations. Contractor shall also maintain at the site: a daily log in which it has recorded Project related information, including but not limited to, weather, number of workers on site, identification of equipment, Work accomplished, problems encountered and other similar relevant Project data; manufacturers' installation, operating and/or maintenance instructions or requirements, certificates and warranties; any special guarantees or warranties required by the Contract Documents; all the Contractor's communications, including but not limited to letters, memoranda, e-mails, invoices and bills of lading, arising out of or related to the Project with the Architect, Owner, and/or Subcontractors, suppliers and/or employees; assignment of all guarantees or warranties from Subcontractors, vendors, suppliers or manufacturers; a list of the names, addresses and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties; and quality control procedures and documents related thereto. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall pay all costs incurred by the Architect and Owner for attendant delay, interference, hindrance or disruption of the Project due to (i) review of submittals out of sequence from the agreed-upon schedule provided that the Architect has demonstrated that it has been financially impacted and/or (ii) due to excessive re-submittals without fault of the Architect. Unless otherwise provided in the Contract Documents, re-submittals in excess of one (1) without fault of the Architect or Owner shall be deemed excessive. If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved in writing.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. The review and approval of a separate item shall not indicate approval of the assembly in which the item functions.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to reasonably rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall use commercially reasonable efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Project site and any buildings located thereon in the event of partial occupancy. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials, dirt, dust and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project except that the Contractor shall give to the Owner any surplus materials that are required by the Contract Documents, but not incorporated into the Project, for future maintenance or repairs. The Contractor shall be responsible for compliance with all requirements regarding notification and disposal of construction demolition debris.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by any insurance policy provided or required in connection with the Project and/or a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. As between the Owner and Contractor, Contractor waives its immunities as may be applicable under law for purposes of confirming the indemnity obligations of this Agreement. Contractor shall require of its Subcontractors, by appropriate written agreements, similar waivers each in favor of all parties, including the Owner and Contractor; all sub-subcontractors at every tier shall also be bound by and comply with this same requirement in their respective agreements.

§ 3.19 Underground Utility Facilities

§ 3.19.1 The Contractor shall comply with ORC Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, the Contractor shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval. The Contractor shall alert immediately the occupants of any premises near the Work and the Architect as to any emergency that it may create or discover. The Contractor shall notify the operator of the underground facility and the Architect of any break or leak in the utility lines or any dent, gouge, groove, or other damage to such lines made or discovered in the course of excavation.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Contractor shall reimburse the Owner for amounts paid to the Architect for site visits that are in addition to what is required of the Architect as described in this Section and that are made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work, including those tests and inspections as provided in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract, including but not limited to Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of the Project representatives shall be as set forth in the agreement between the Owner and Architect.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be subject to Owner's prior approval.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work, including material suppliers. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work, including material suppliers. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Retention of Subcontractors shall be as set forth in the Agreement.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall provide that the Owner is a third party beneficiary of the subcontract agreement and shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Contractor shall promptly provide to Owner copies of any subcontract agreement along with copies of all bids or other proposals from Subcontractors. The subcontract agreement shall meet the applicable requirements of Ohio Administrative Code 153:1-3.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract.

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

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall lay out and install its Work at such time or times and in such manner as not to delay or interfere with the carrying forward of the Work of Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

§ 6.4 Owner's Provided Materials

The Owner may provide materials for Contractor to incorporate into the Project, and the Contractor shall incorporate such materials as part of its Work for the Project. The Contractor shall be fully responsible for and the Contract Sum shall cover, all matters relating to the receipt of materials provided by Owner as if the Contractor were the original purchaser, including but not limited to verifying correct quantities; coordinating purchases; providing, obtaining and managing all warranties and guarantees required by the Contract Documents including assistance to the Owner with the enforcement of such warranties and guarantees; inspection and acceptance of the materials; and loss or damage to the materials following acceptance of the materials by the Owner due to the negligence of the Contractor. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other

arrangements normally required by the Contractor for the particular material furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor shall determine prior to incorporation into the Work if such materials are patently defective and whether they are in conformity with the Contract Documents (and, if applicable, any specifications provided by the Owner). If the Contractor discovers defects or non-conformities upon such visual inspection, the Contractor shall not utilize such materials in the Contractor's Work and instead shall properly notify the Owner of the defective or nonconforming condition so that repair or replacement of those materials can occur without undue delay or interruption to the Project. If the Contractor fails to perform such inspection and incorporates such defective or non-conforming materials into the Contractor's Work, Contractor shall be responsible for all damages to the Owner resulting from Contractor's incorporation of such materials into the Work. The Contractor shall maintain records of all Owner-provided materials it incorporates into the Work and shall account to the Owner for all Owner-provided materials delivered into the Contractor's or Subcontractor's possession.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4 The Contractor shall not proceed with any change in the Work without the appropriate written authorization. Except as otherwise provided herein, the Contractor's failure to obtain prior written authorization for a change in the Work shall constitute a waiver by the Contractor of an adjustment to the Contract Sum and/or Contract Time for the related Work. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 Change Orders

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

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

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change, the cumulative impact of the associated change in the Work in combination with one or more other changes in the Work, and any and all adjustments to the Contract Sum and the Contract Time. The Contractor is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the Contractor signs the Change Order. A Change Order signed by the Contractor without any indication of change in the Contract Sum and/or Contract Time indicates the Contractor's agreement that there will be no change in the Contract Sum and/or Contract Time. Unless agreed otherwise by the parties, the Change Order form shall be the AIA Document G-701.

§ 7.2.3 The Contractor shall proportionately increase the amount of its bond whenever the Contract Sum is increased. If notice of any change affecting the Contract is required by a provision of the bond, giving the notice shall be the Contractor's responsibility.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes

in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner or Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs or credits arising from a change in the quantity of field labor directly involved in the Work, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect. Each of the fringe benefits shall be a separate line item, and the Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker. Each of the allowable payroll expenses shall be a separate line item. Costs that shall not be reimbursed include voluntary employee deductions (such as but not limited to deductions for charitable donations or U.S. savings bonds) and employee profit sharing;
- .2 Costs of materials, supplies, and equipment, including cost of transportation (based on reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment), whether incorporated or consumed. The cost or credit for reusable materials (e.g. concrete form lumber, shoring, or temporary enclosures) shall be limited to 33 percent of the material cost for each use;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others. Downtime due to repairs, maintenance and weather delays shall not be allowed;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change;
- .5 Costs or credits arising from a change in the quantity of supervision and field office personnel directly attributable to the change;
- .6 General Conditions Costs. Any costs or credit arising from a change in the quantity of the Contractor's general conditions costs shall be limited to the extent to which the change is attributable to an associated change in the Contract Time for attainment of Substantial Completion resulting from the change in the Work

§ 7.3.5 If the Contractor disagrees with the adjustment as determined by the Architect, the Contractor may make a Claim in accordance with applicable provisions of Article 15, and the timeline for initiating a Claim begins to run on the date the Architect issues its final determination.

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

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

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

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

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. Disagreements with the Architect's final determination shall be resolved in accordance with Article 15.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Unless otherwise designated by the Architect, the form to be utilized by Architect in authorizing minor changes in the Work shall be the AIA Document G-710, Architect's Supplemental Instructions.

§ 7.5 Proposal Requests

§7.5.1 The Architect may issue to Contractor at any time a proposal request for a change in the Work, including a change in the Contract Sum and Contract Time (a "Proposal Request"). A Proposal Request is not a Change Order, a Construction Change Directive, an order for a minor change in the Work, or authorization to proceed with the change in the Work described in the Proposal Request. Unless otherwise designated by the Architect, the form to be utilized by Architect for a Proposal Request shall be the AIA Document G709, Proposal Request.

§7.5.2 The Contractor shall respond with a proposal to the Architect (a "Proposal") within seven (7) days after receiving the Proposal Request, and the Contractor shall include with its Proposal the Contractor's proposed adjustments to the Contract Sum and Contract Time. The allowable time for the Contractor's response may be extended by written agreement of the Contractor, the Owner and the Architect. Failure to respond within the allowed time frame may result in the Owner proceeding with the work through any other means.

§7.5.3 The Contractor shall hold the Proposal valid and open for acceptance for at least thirty (30) days. The acceptance period may be adjusted by mutual written consent of the Contractor and the Owner.

§7.5.4 The Owner may accept the Proposal in writing at which point the Contractor's obligations to perform the work as outlined in the Proposal shall become binding. The parties promptly thereafter shall memorialize the Owner's acceptance of the Proposal through a Change Order.

§ 7.6 Request for Change Order

§7.6.1 The Contractor may initiate a Change Order request by submitting written notice to the Architect and Owner accompanied by a Proposal meeting the requirements of Section 7.5.

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 pursuant to the Agreement.

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Where the term "business day" is used, if the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Subject to other provisions of the Contract, the Contractor will not be entitled to an increase in the Contract Sum and will only be entitled to an extension of the Contract Time on account of delay in the commencement or progress of Work on the critical path of the construction schedule caused by acts of nature or the public enemy, acts or orders of the government not arising from the Contractor's failure to comply with applicable law, fires, floods, weather, and labor disputes beyond the Contractor's control.

§ 8.3.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Time, or both: (i) on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path; (ii) to the extent that a delay occurs concurrently with a delay attributable to the Contractor; or (iii) on account of the delay of any Work not on the critical path.

§ 8.3.3 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless (i) the delay is caused by the Owner or (ii) the delay was not authorized or permitted under the Contract.

§ 8.3.4 Claims under this Section 8.3 shall be made in accordance with applicable provisions of Article 15.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed by twenty percent (20%) or more so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, and unless a different timeline is specified in the Agreement, the Contractor shall submit a schedule of values to the Architect within ten (10) days following the date of commencement of the Work, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values, including changes to the Contract Sum and changes required by the Architect if the Architect subsequently determines the schedule of values to be in any way unreasonable or inaccurate, shall be promptly submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the timelines established in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by (i) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous Application for Payment was submitted have been paid or otherwise satisfied; (ii) a current list of the Subcontractors and suppliers showing their respective contract sums, amounts paid, and amounts due; (iii) schedule of all materials and equipment stored on-site; (iv) documentation required for materials and equipment stored off-site; (v) conditional lien waivers and releases from all Subcontractors and suppliers to be paid from the payment resulting from the Application for Payment; (vi) unconditional lien waivers and releases from all Subcontractors and suppliers for which Contractor was required to provide a conditional lien waiver in connection with a prior Application for Payment; and (vii) such other data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

§ 9.3.2.1 The Contractor's request for storage of materials and equipment off site shall minimally include:

- .1 A list of the fabricated materials consigned to the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
- .3 A letter from the Contractor's surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve the Contractor of its responsibility to complete the Work.
- .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as an additional insured.
- .5 Information pertaining to the Contractor's place of storage, the layout and security of the place of storage, and such information that verifies that the materials are securely stored at the place of storage.
- .6 Subsequent Applications for Payment shall itemize the materials and their cost which were approved on previous Applications for Payment and remain in off site storage.

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding

certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Contractor disputes a determination by the Architect with regard to a Certificate of Payment, and during any related dispute resolution, litigation, or other proceeding, the Contractor nevertheless shall continue to prosecute the Work.

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than the timeline set forth in Ohio Revised Code 4113.61, after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 [Intentionally Deleted].

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier, including but not limited to claims for unjust enrichment. In the event that the Owner receives a claim affidavit in accordance with Ohio Revised Code Chapter 1311 relating to amounts due and unpaid for labor and work performed and material furnished for the Work, the Owner shall detain the amount due and owing from the Contractor unless and until the claim is released and/or discharged as more particularly set forth in said Chapter 1311. Posting a bond or other security discharging a lien shall not relieve the Contractor of its indemnity obligations in this Section.

§ 9.7 Failure of Payment

If the Owner, through no fault of the Contractor, does not pay the Contractor within seven days after the date established in the Agreement, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received provided that Contractor shall not stop Work for non-payment if the Owner initiates the payment process for any undisputed amounts due the Contractor.

§ 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, including all necessary testing and/or startup, and when all required occupancy permits and any other necessary permits and approvals, if any, have been issued, so that the Owner can occupy or utilize the Work for its intended use, subject only to the completion or correction of minor items of Work that will not interfere with or hinder the Owner's use of the Work and areas adjacent to the Project site.

§ 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 prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete or correct all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Contractor shall pay all costs incurred by the Architect, Owner and Separate Contractors for costs due to excessive inspections without fault of the Architect or Owner. Unless otherwise provided in the Contract Documents, inspections to determine Substantial Completion in excess of one (1) without

the fault of the Architect or Owner shall be deemed excessive.

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate (the "punch list"), or, if no timeframe is fixed, then not greater than thirty (30) days from the date of the Certificate. Failure to include an item on the Certificate and punch list does not alter the responsibility of the Contractor to complete or correct deficiencies in the Work in accordance with the Contract Documents. 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.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, and following certification of an Application for Payment, the Owner shall make payment of retainage as set forth in the Agreement.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Contractor shall pay all costs incurred by the Architect, Owner and Separate Contractors for costs due to excessive inspections without fault of the Architect or Owner. Unless otherwise provided in the Contract Documents, inspections to determine final completion in excess of one (1) without the fault of the Architect or Owner shall be deemed excessive.

§ 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 (unless a different form is agreed to, Contractor shall provide the AIA Document G-706, Contractors Affidavit of Payment of Debts and Claims and AIA Document G-706A, Contractors Affidavit of Release of Liens), (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the insurance will be renewable to cover the period required by the Contract Documents, (4) consent of the Contractor's surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or

specific Subcontractor warranties, (6) all documents and items required to be submitted by Contractor in accordance with the Contract Documents which shall include those items set forth in Section 3.11 which have not previously been delivered to Owner, (7) unconditional lien waivers and releases from all Subcontractors and suppliers; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties and guarantees required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 claims, damages, losses or expenses for indemnification.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies including, but not limited to, the Owner's safety, health, and infection control policies and programs.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, benchmarks, monuments, other reference points, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner and Separate Contractors.

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 If a Separate Contractor incurs damages resulting from the Contractor's performance of its Work, and the Contractor fails to remedy the damage or to reimburse the Separate Contractor for its damages, then the Owner reserves the right to pay the Separate Contractor suffering the damage and deduct such amounts from the amount due the Contractor.

§ 10.2.10 The Contractor acknowledges that the safety of the public and of the employees, invitees and guests of the Owner is of the utmost importance. While the Contractor is at the Project site, the Contractor will take no action that would jeopardize the safety of the public and of the Owner's employees, invitees or guests and, without the Owner's written approval, shall take no action that would interfere with the Owner's activities. The Owner reserves the right to require the Contractor and its employees to wear identification (subject to applicable safety standards), to stay in designated Work areas at all times while on the Owner's property and to record on a log a person's presence immediately upon entering the Owner's property. The Owner shall have the right to effect the immediate removal of a person from the Project site for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any inappropriate behavior directed toward or in the vicinity of employees, invitees or guests of the Owner or for other good cause shown.

§ 10.2.11 The Contractor shall be enrolled in and remain in good standing in the Ohio Bureau of Workers' Compensation Drug-Free Safety Program or a comparable program approved by the Bureau that meets the requirements of Ohio Revised Code 153.03. Contractor shall comply with and shall require its Subcontractors to comply with the Ohio Bureau of Workers' Compensation's Drug-Free Workplace Program requirements under Revised Code 153.03(E), and Contractor shall include language in its subcontractual agreements mandating that each Subcontractor require Sub-subcontractors to similarly comply with the Ohio Bureau of Workers' Compensation's Drug-Free Workplace Program requirements.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain or cause to be obtained the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of the materials or substances or renders the material or substance harmless as evidenced by a written report which is prepared by an environmental consultant retained by Owner, or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work, or (iii) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum equitably adjusted based on the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 [Intentionally Deleted].

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. Hazardous materials or substances to be used at the Project site by Contractor shall be identified by a Safety Data Sheet. The Contractor shall assemble all of its applicable Safety Data Sheet in a notebook and submit it to the Architect for its information prior to a hazardous material or substance being brought to the Project site. The Contractor shall maintain all Safety Data Sheet notebooks at the Project site for the duration of the Project.

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

§ 10.3.6 [Intentionally Deleted].

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies rated A- or higher by Best Insurance Reports and lawfully authorized to do business in the State of Ohio such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed 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.

§ 11.1.2 The insurance required by Section 11.1.1 shall include and shall be written for not less than the following, or as required by law, whichever coverage is greater.

- 1 Workers' Compensation: Statutory
- 2 Employer's Liability: (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000;
- 3 Commercial General Liability ("CGL"): (1) an each-occurrence limit of not less than \$2,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000. The CGL insurance shall provide at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations (shall not exclude coverage to the additional insured(s) for bodily injury or property damage), personal and advertising injury, and liability assumed under an insured contract. The CGL insurance shall not exclude coverage for damage to electronic data. The CGL policy shall be endorsed providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects;
- 4 Automobile Liability: covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident;

- .5 Umbrella/Excess Liability: Such policies shall be supplemented by an umbrella policy of additional protection in the amount of \$5,000,000 aggregate;
- .6 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall maintain Professional Liability Insurance covering performance of the professional services, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate; and
- .7 Pollution Liability: If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, asbestos abatement, storage-tank removal, or similar activities), or involves hazardous materials, the Contractor shall maintain a contractor's pollution liability policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Contractor for damages (including from mold) sustained by the Owner by reason of the Contractor's performance of the Work. The policy shall have an effective date, which is on or before the date of commencement of the Work.

The Contractor shall maintain required coverages without interruption from the date of commencement of the Work and for not less than five years following Substantial Completion. The Contractor shall pay all deductibles, self-insured retentions, or both contained in the policies of insurance. The Contractor shall continue to provide evidence of coverage to the Owner on an annual basis during the aforementioned period.

§ 11.1.3 The Contractor shall submit to the Architect and the Owner a copy of certificates of insurance prior to commencement of the Work. Certificates shall include each and every type of coverage specified. Such certificates shall name the Owner and Architect as additional insureds and shall contain a statement that the Owner will be notified 30 days prior to the cancellation of any insurance policy evidenced by this certificate. The additional insureds requirements of this Section shall include completed and ongoing operations and Contractor shall provide additional insured endorsements. An additional certificate evidencing continuation of liability coverage, including coverage for completed and ongoing operations, shall be submitted with the final Application for Payment as required by Section 9.10.2. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy if and to the extent required to meet the insurance requirements of this Section 11.1. All renewal and replacement policies shall comply with the requirements of this Section 11.1. A failure of the Owner to request a certificate or other evidence of compliance with the insurance requirements or a failure of the Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain the required insurance.

§ 11.1.4 The Contractor shall cause all Subcontractors to provide Workers' Compensation, Comprehensive General Liability, and Automobile Liability Insurance with commercially reasonable limits and certificates of insurance related thereto. Such certificates shall name the Owner and Architect as additional insureds.

§ 11.1.5 The Contractor shall not commence Work under the Contract until the Contractor has obtained and provided proof of all insurance required under this heading.

§ 11.1.6 All liability policies required in this Section 11.1 shall be primary and non-contributory with respect to any other insurance or self-insurance programs that cover the Owner or an additional insured.

§ 11.1.7 If Contractor fails to purchase and/or maintain any insurance required under Section 11.1, the Owner may, but shall not be obligated to, upon seven (7) days written notice to Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.8 Performance Bond and Payment Bond

§ 11.1.8.1 The Contractor shall furnish bonds as required in the Agreement between Owner and Contractor.

§ 11.1.8.2 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retainage; (iii) request for final payment; and (iv) any other item required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety. The Owner may, in the Owner's sole discretion, inform the surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interests, privileges and benefits under and pursuant to any bond issued in connection with the Work. The Contractor shall be notified by the Owner, in writing, of any communications with the surety.

§ 11.1.8.3 If at any time any surety providing bonds for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the Contractor shall immediately, but no later than 21 days of any such action listed above, provide the Owner with new bonds in the form and amount required under the Contract.

§ 11.2 Property Insurance

§ 11.2.1 Unless otherwise provided in the Agreement, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section to be covered, whichever is later.

§ 11.2.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, tornado, flood, windstorm, explosion, breakage of glass, falsework, testing and startup, temporary buildings and structures, materials used in the construction process, hot and cold testing, and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property (including overtime wages directly incurred to accelerate restoration or repair of the damaged property, and the extra costs that are directly incurred to rapidly transport materials and supplies necessary to the repair or replacement); soft costs coverage to the extent commercially available to comparable insureds, including the reasonable direct costs incurred by Architect and/or Contractor as a result of a property damage loss covered by the policy; and provisions for mechanical or electrical breakdown, or boiler system testing. Coverage shall be primary to all other applicable insurance. Notwithstanding any of the foregoing, the insurance shall include coverage only for those costs incurred as a direct result of direct physical damage to property otherwise covered by the policy; business income, business interruption, home office overhead, and lost productivity costs of Contractor or any subcontractor at any tier shall not be covered.

§ 11.2.1.2 If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered by the insurance because of such deductibles.

§ 11.2.1.3 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.

§ 11.2.1.4 Partial occupancy or use in accordance with Section 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.

§ 11.2.1.5 The insurance required by this Section 11.2 is not intended to cover machinery, tools, apparatus, scaffolding, hoists, forms, staging, shoring or other equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

§ 11.3 WAIVERS OF SUBROGATION

The Contractor waives all rights against the Owner and their agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise. Contractor shall require of its Subcontractors, by appropriate written agreements, similar waivers each in favor of the Owner and Contractor; all Sub-subcontractors at every tier shall also be bound by and comply with this same requirement in their respective agreements.

§ 11.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner in good faith shall have power to adjust and settle a loss with insurers.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, for a period of one year after the date of Substantial Completion of the Work or designated portion thereof, the Contractor shall correct any of the Work that is found defective in workmanship, materials or not in accordance with the requirements of the Contract Documents. If defective or nonconforming Work becomes apparent within the one-year period, the Owner shall notify the Contractor in writing. Within fourteen (14) days of receipt of said notice, the Contractor shall visit the Project in the company of one or more representatives of the Owner to determine the extent of the defective or nonconforming Work. If the defective or nonconforming Work is considered by the Owner to be an emergency, the Owner may require the Contractor to visit the Project within one (1) calendar day or less of receipt of said notice. The Contractor shall promptly repair or replace the defective or nonconforming Work, including all adjacent Work damaged as a result of such defective or nonconforming Work. The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective or nonconforming Work. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 With respect to items of Work that are corrected, completed or first performed after Substantial Completion but prior to final completion of the Project, including completed punch list items, the one-year period with respect to these items shall commence upon correction or completion of the item.

§ 12.2.2.3 One month prior to the end of the one (1) year period, the Contractor shall attend a walk-through of the Project scheduled by the Architect.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents

may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of the County where the Project is located which shall have exclusive jurisdiction to the exclusion of all other jurisdictions. The applicable statutes of limitations and repose under Ohio law shall apply to all causes of action between the Owner and Contractor.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the

convenience of the Contractor in the scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

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

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

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

§ 13.4.7 Any reports or documents resulting from tests, inspections and approvals required under this Section 13.4 shall be submitted to the Owner and Architect.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in the Agreement.

§ 13.6 Training Sessions

The Contractor will participate in training sessions for the Owner in cooperation with the Architect, Owner, Owner's personnel and consultants and the Contractor will participate in tests in cooperation with the Architect, Owner, Owner's personnel and consultants to the extent applicable to the Contractor's Work.

§ 13.7 Equal Opportunity

§ 13.7.1 The Contractor shall comply with applicable law regarding equal employment opportunity, including Ohio Revised Code Section 153.59. The Contractor shall cooperate fully with the State's Equal Opportunity Coordinator, with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract. The Contractor agrees to the following:

§ 13.7.1.1. That, in the hiring of employees for the performance of Work under the Contract or any Subcontract, Contractor and any Subcontractor or person acting on Contractor's or a Subcontractor's behalf shall not discriminate against any citizen of the state who are qualified and available to perform the services to which the employment relates by reason of race, color, religion, sex, age, disability, military status as defined in section 4112.01 of the Revised Code, veteran status, national origin, ancestry, sexual orientation, gender identity (including gender expression), marital status or genetics; and

§ 13.7.1.2. That Contractor and any Subcontractor or person acting on Contractor's or a Subcontractor's behalf shall not in any manner discriminate against, intimidate, or retaliate against any employee hired for the performance of services under the Contract on account of race, color, religion, sex, age, disability, military status, veteran status, national origin, ancestry, sexual orientation, gender identity (including gender expression), marital status or genetics.

§ 13.7.2. In the event the Contractor fails to comply with these nondiscrimination clauses, the Contractor shall be subject to the forfeiture requirements of Ohio Revised Code Section 153.60.

§ 13.7.3 Hiring Under State Public Improvement Contracts. Any provision of a hiring hall contract or agreement which obligates the Contractor to hire, if available, only employees referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless at the date of execution of the hiring hall contract or agreement, or within thirty (30) days thereafter, the labor organization has procedures in effect for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in Ohio Revised Code Section 4112.01, or ancestry and unless the labor organization includes in its apprentice and journeyman's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

§ 13.8 The table of contents, titles, headings, running headlines and marginal notes contained in the Contract are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or describe or limit the interpretation of the provisions to which they refer.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 75 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 [Intentionally Deleted].

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon thirty days' notice to the Owner and Architect, terminate the Contract provided that the reason for the termination is not cured within the thirty-day period and recover from the Owner payment for Work executed as of the date of termination, but not overhead and profit on Work not executed and not to exceed the Contract Sum (however, if such reason for termination cannot reasonably be cured within the thirty-day period, then Contractor shall not terminate the Contract so long as Owner commences to cure the reason for termination within such thirty-day period and diligently pursues such cure).

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is in material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, and provided that the reason for the termination is not cured within the seven-day period, terminate employment of the Contractor and/or exercise the following non-exclusive remedies which will be cumulative:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.2.5 Should the Owner terminate this Agreement for cause under this Section 14.2, but that cause be subsequently found insufficient to support termination, the termination shall be deemed one of convenience under Section 14.4.

§ 14.2.6 If the Contract is terminated for cause, the Contractor's surety may perform the Contract. If the Contractor's surety does not commence performance of the Contract within ten (10) days of the date of Contract termination, the Owner may complete the Work by means the Owner determines appropriate. If the Contractor's surety performs the Work, the provisions of the Contract Documents govern the surety's performance, with the surety in place of the Contractor in all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of the Owner to complete the Work.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be equitably adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall with respect to the Work that is terminated:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and
- .4 deliver to Owner all Project-related documents and work product of Contractor and its Subcontractors related to the Work.

§ 14.4.3 If the Contract is terminated in accordance with this Section 14.4, the Owner will pay the Contractor, i) for Work performed under the Contract up to the date the notice of termination is received by the Contractor at the rates for Work performed under the Contract, including overhead and profit up to the date of termination and reasonable expenses directly attributable to the termination, but not for overhead or lost profit on unperformed Work, ii) for Work performed at the direction of the Owner on and after the date on which the notice of termination is received by the Contractor, as determined by the procedures applicable to Construction Change Directives, and iii) for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Construction Change Directives.

§ 14.4.4 The termination of the Contract under this Section 14.4 shall be without prejudice to rights or remedies which exist at the time of termination.

§ 14.5 Contractor Insolvency

§ 14.5.1 The Owner may immediately terminate the Agreement for cause if:

§ 14.5.1.1 the Contractor commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws; or

§ 14.5.1.2 any legal entity commences an involuntary case against the Contractor under Title 11 of the United States Code or the corresponding provisions of any successor laws and (1) the case is not dismissed within 60 days after its commencement; or (2) the court before which the case is pending issues an order for relief or similar order approving the case; or

§ 14.5.1.3 a court of competent jurisdiction appoints, or the Contractor makes an assignment of all or substantially all of its assets to, a receiver, trustee, liquidator, or other similar custodian for the Contractor or all or substantially all of the Contractor's assets; or

§ 14.5.1.4 any attachment, execution, or other judicial seizure is levied against all or substantially all of the Contractor's assets; or

§ 14.5.1.5 the Contractor takes any action toward the dissolution or winding up of its business; or

§ 14.5.1.6 the Contractor fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or it acknowledges in writing that it is unable to do so.

§ 14.5.2 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, the Contractor as the debtor-in-possession, or the trustee of the Contractor's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition.

§ 14.5.3 If the Owner intends to exercise its termination rights under this Section 14.5, the Owner shall notify the Contractor in writing of the Owner's termination of the Contract and the cause(s) for that termination.

§ 14.5.4 The Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Owner to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question asserted by the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor. The Contract, including but not limited to this Article 15 does not require the Owner to make a claim, dispute, demand or assertion against the Contractor for the payment of money, a change in the Contract Time or other relief or in order for the Owner to exercise its rights and remedies against the Contractor, including but not limited to the remedying of a Contractor default, the imposition of liquidated damages and binding dispute resolution in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Causes of Action

The Owner and Contractor shall commence all causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable statute of limitation and repose. The Owner and Contractor waive all causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Time Limit on Claims. Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to submit proper and timely notice in accordance with this Section shall constitute a waiver and abandonment of the Claim by Contractor.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions, as recorded at the government-controlled weather-recording facility nearest to the Project site, were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.6.3 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor

§ 15.1.7 Waiver of Claims for Consequential Damages

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor shall this Section 15.1.7 apply to a party's gross negligence, willful misconduct or indemnity obligations.

§ 15.1.8 Substantiation and Certification of Claim

§ 15.1.8.1 Substantiation of Claim. Within fifteen (15) days after the initiation of a Claim by Contractor, the Contractor shall substantiate its Claim by providing the following minimum written information to Owner: (i) a narrative of the circumstances which gave rise to the Claim, including, without limitation, the start date of the event or events and the actual, or anticipated, finish date; (ii) detailed identification of the Work affected by the event giving rise to the Claim; (iii) copies of the Contractor's daily log for each day of impact; (iv) copies of relevant correspondence and other information regarding or supporting Contractor's entitlement; (v) copies of the Contractor's most recent income statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; (vi) if the Claim is for additional cost, the amount of the Claim, the information specified in Section 15.1.5 herein and a statement that the increase requested is the entire increase in the Contract Sum associated with the Claim; (vii) if the Claim is for additional Contract Time, the information specified in Section 15.1.6 herein. Contractor shall also provide such additional information as requested by Owner or Architect to substantiate the Contractor's Claim within ten (10) days following request. The Contractor shall provide the required information in the formats requested, which include both paper and electronic copies. The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of the Claim.

§ 15.1.8.2 Certification of Claim Within fifteen (15) days after the initiation of the Claim by Contractor, the Contractor shall certify its Claim by providing the notarized certification, signed and dated by the Contractor, as follows: "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the Owner is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor." The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of the Claim.

§ 15.2 Initial Decision

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

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, either party may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Disputes, or other matters in controversy between the parties, including a Claim, arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their disputes or other matters in controversy by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not

constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.