

ADDENDUM NUMBER ONE

DATE: 22 November 2011

PROJECT: Server Room Emergency Power & HVAC
Main Campus: 8900 US Highway 14, Crystal Lake, IL
Shah Center: 4100 West Shamrock Lane, McHenry, IL

OWNER: McHenry County College
8900 US Highway 14
Crystal Lake, Illinois 60012

ARCHITECT'S PROJECT NO. 1127.02

ARCHITECT: RuckPate Architecture
22102 North Pepper Road, Suite 201
Barrington, Illinois 60010

TO ALL BIDDERS OF RECORD:

This Addendum forms a part of a modification to the bid requirements and proposed contract documents for the subject project, dated 15 November 2011. Receipt of this Addendum shall be acknowledged in the Form of Bid. Failure to do so may subject the bidder to disqualification. This Addendum consists of two (2) pages, eighteen (18) items, and two (2) attachments.

Bid Documents are hereby amended as follows:

PROJECT MANUAL

ITEM DESCRIPTION

Reference: Section 00 72 00 - General Conditions

1. Delete the section in its entirety and insert the attached specification section 00 72 00 - General Conditions.

Reference: Section 07 50 01 - Roof Patching

2. Paragraph 2.04, insert the following:

“E. Mechanical fasteners for insulation attachment to concrete deck:

1. Olympic CD-10 fasteners with 2 inch dia. Galvalume pressure plate, or approved equal system.”

3. Insert the following paragraph:

"2.06 **Blocking:** Pressure treated with Copper Azole (CA) wood preservative meeting AWPA standard P5."

DRAWINGS

Reference: Sheet A1.0 - Plans, Details, and Sections

4. At detail 1, insert note: "Remove & replace ceiling as necessary for MEP work."
5. At detail 2, delete note: "Exist...metal deck" and insert note: "Exist...hollow-core precast concrete deck."
6. At detail 2, delete note: "Countersunk self-tapping self-drilling screws every flute not to exceed 12 inches o.c. staggered." and insert note: "Countersunk 1/4 inch Tapcon or screen-tube-epoxy anchoring system (ITW Ramset/

RedHead *Epcon*, Rawl *Foil-Fast Epoxy Injection Gel* or approved equal) through appropriate washer, blocking and concrete deck min. embedment 1 1/4 inch, 16 inches on center staggered and one at each corner of curb."

Reference: Sheet M1.1 - First Floor Plan - Building A - Demo - Mechanical

7. Relocate CRU-1 and the existing Fire Suppression Control panel in Server Room A108e. Refer to attached sketch MSK-01.

Reference: Sheet E1.2 - Enlarged Plans

8. Relocate existing Fire Suppression Control panel located in Server Room A108e. Match and extend all existing power and control wiring to new location. Refer to MSK-01 for location.

Reference: Sheet E2.1 - First Floor Plan - Shah Center - Electric

9. At detail 3, add keynote 6 to ACC-2.
10. At detail 1, insert note: "the reinforced generator pad at Shah Center shall be placed directly on draining material without piers or frostwall."
11. At detail 1, insert note: "The conduit for panel 'IT' shall be routed up through chase in Room 128 to above the ceiling and above the ceiling to the new panel location."

CLARIFICATIONS

Reference: Section 00 21 00 - Instructions to Bidders

12. Hard copy addenda will not be distributed and bidders should check the web site www.McHenry.edu/bid to verify that they have received all addenda.

Reference: Sheet A1.0 - Plans, Details, and Sections

13. At detail 3, "curtainwall-type panels" are existing, and may be removed, preserved, and reinstalled as part of Contractor's work to get all necessary equipment into the Server Room.

Reference: Sheet M1.2 - Second Floor Plan - Building A - Mechanical

14. On the roof of Building A, the air cooled condenser, associated piping, and condensing unit are existing to remain. The piping associated with the condensing unit shall be removed as shown.
15. The new air cooled condenser, ACC-1, shall be located such that it is centered between two existing roof joists. Contractor shall field verify exact location of joists and install condenser and curb as required. Condenser shall be securely connected to the curb with reinforcing of the curb provided as necessary.

Reference: Sheet E1.2 - Enlarged Plans

16. The existing equipment next to ATS-IT shall be relocated including disconnect switch and associated master clock system generator as required for ATS installation.

Reference: Sheet E4.0 - Electric Schedules and Details

17. The square and circle symbols showing junction boxes are interchangeable.
18. The square and circle symbols showing electrical connection to equipment are interchangeable.

End of Addendum

GENERAL CONDITIONS
SECTION 00 72 00

1 General Conditions:

- 1.1 The general conditions of the Contract are contained in "General Conditions of the Contract for Construction" AIA A201, 2007 Edition, as amended and included at the end of this section, hereinafter collectively referred to as the "General Conditions".

End of Section

(55 pages follow)

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Project Name

Server Room Emergency Power and HVAC

THE OWNER:

(Name and address)

McHenry County College

Dr. Vicky Smith, President

8900 U.S. Highway 14

Crystal Lake, Illinois 60012

815-455-8726

THE ARCHITECT:

(Name and address)

Ruck Pate Architecture

Steven H. Pate

22102 N. Pepper Road, Suite 201

Lake Barrington, Illinois 60010-2550

847-381-2946

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents do include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT AND CONSTRUCTION DELIVERY

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. The Work shall also include labor, materials, equipment and services provided or to be provided by Contractors, its lower tier subcontractors and sub-sub-contractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents. The Contractor acknowledges and agrees that at the time of attachment hereto or incorporation herein each Contract Document is adequate and sufficient to provide for the completion of the Work described therein, and includes all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work described therein in accordance with all applicable laws, rules, ordinances, codes and professional standards.

§ 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 and certify termination of the Agreement under Section 14.2.2.

§1.1.9 FINAL COMPLETION

Final completion is achieved at the time that final inspection has been performed by the Architect and the final Certification and Application for Payment, has been submitted by Architect to the Owner, and accepted by the Owner for payment.

§1.1.10 PROVIDE

Where the word “provide” appears, it shall be interpreted to mean “the Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and/or complete the Work.”

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 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. The Contractor represents that its lower tier subcontractors, manufacturers and suppliers engaged or to be engaged by it have been supplied all Contract Documents necessary to fulfill all prescriptive or performance requirements of the Work.

§ 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 Site Investigation: By executing the Contract, the Contractor acknowledges that he has satisfied himself as to the nature and location of the work, the general and local conditions, including those bearing upon access (including partial or total restriction in access), transportation, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way effect the work or the cost thereof under this Contract. Throughout the course of construction Owner shall maintain a full time high quality education program in the facilities under construction. Any failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from any obligations with respect to his Contract.

§1.2.5 Should discrepancies appear among the Contract Documents or between the Contract Documents and existing conditions, the Contractor shall request an interpretation from the Architect before bidding. If the Contractor fails to make such request, it is presumed that both provisions were included in the bid and the Architect shall determine which of the conflicting requirements shall govern. The Contractor shall perform the work at no additional cost to the Owner in accordance with the Architect's determination. Where conflicts exist between or within the Contract Documents or between the Contract Documents and applicable standards, codes, ordinances or manufacturer's recommendations, and clarification has not been requested from the Architect prior to bidding as provided for above, the more stringent or higher quality standard shall prevail. Large scale drawings shall take precedence over small scale drawings, figured dimensions on the drawings over scaled dimensions and noted material over graphic representations.

§1.2.6 The Contractor shall provide all work and materials which any section or part of the Drawings, Specifications or conditions require him to provide regardless of whether such requirement is or is not faithfully repeated in other parts of documents thereof to which the provision might be appropriate.

§1.2.7 All Work shall conform to the Contract Documents. If work is required in a manner to make impossible to produce work of the highest quality, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before proceeding with the Work. The Contractor shall not make changes to or deviate from the Construction Documents without receiving written acceptance by the Architect and Owner. If the Contractor fails to make such request, no excuses will thereafter be entertained for failure to carry out the Work in the required manner or provide required guarantees, warranties or bonds.

§1.2.8 Should a conflict occur in or between Drawings and Specifications. Contract is deemed to have included the better quality and larger quantity of work.

§1.2.9 The Contractor shall provide all work and materials which any Section or part of the Drawings, Specifications or Conditions require him to provide regardless of whether such requirement is or is not faithfully repeated in other parts of Documents thereof to which provisions might be appropriate.

§1.2.10 Whenever a provision of the Specifications conflicts with agreements or regulations in force among members of trade associations, unions or councils which regulate or distinguish what work shall or shall not be included in the Work of a particular trade, the Contractor shall make all necessary arrangements to reconcile such conflict without delay, damage, or cost to the Owner, and without recourse to the Architect or the Owner. In case progress of the Work is affected by undue delay in furnishing or installing items of material or equipment required under the Contract because of a conflict involving such agreement or regulations, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

§1.2.11 The Agreement shall govern over all the other Contract Documents. In cases of discrepancies among the Contract Documents other than the Agreement, the matter shall be submitted to the Architect for clarification prior to proceeding with the Work involved. No increase or decrease in Contract Sum shall result, provided such clarification is consistent with the intent of any of the documents in discrepancy.

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

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, including those in electronic form, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner, the Board of Trustees of McHenry Community College is a body politic and corporation, State of Illinois and is the 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 authority to the extent established by Board Resolution to bind the Owner with respect to matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor shall provide such information or other assistance as the Architect or the Owner may request in connection with obtaining such permit. § 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. 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. The Contractor shall review such information furnished by the Owner and compare such information with observable physical conditions and the Contract Documents and shall promptly report to Owner and Architect in writing any conflicts, errors or omissions that it recognizes. The Contractor shall also be responsible for any such conflicts, errors or omissions that it should have recognized exercising the standard of care provided in Subparagraph 3.1.2. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof, including, without limitation, all structural, surface and subsurface conditions based upon the soil and subsurface engineering and investigative reports (including any environmental site assessments), if any, provided by the Owner and such site investigations and other appropriate due diligence investigations as a prudent contractor for a Project of this size, scope and quality would undertake. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine surface, subsurface and existing conditions. Based upon the foregoing inspections, understandings, agreements and acknowledgements, the Contractor agrees and acknowledged (i) that the Contract Sum is just and reasonable compensation for all the Work, including all reasonably unforeseen, foreseen and foreseeable risks, hazards and difficulties in connection therewith and (ii) that the Contract Time is adequate for the performance of the Work.

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

§ 2.2.5 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.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment so as to be able to complete the Work within the Contract Time or fails to remove and discharge (within ten days) any lien filed upon the Owner's property or project designated funds by anyone claiming by, through or under the Contract, or disregards the instructions of the Architect or the Owner, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. These rights shall be in addition to, and not a restriction of, any other rights of the Owner under this Contract. This right shall be in addition to, and not in restriction or in derogation of Owner's rights under Article 14. The Owner's right to stop the work shall not relieve the Contractor from his sole and exclusive responsibility for site safety. The Owner's exercise of the right to stop the Work shall be solely for Multiple Prime Contractor's failure to complete the Work in accordance with the Contract Documents and shall in no way be construed as placing the Owner in charge of the Work or in any way responsible for site safety.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a forty eight (48) hour period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days after request.

§ 2.5 OWNER'S RIGHT TO AUDIT

§ 2.5.1 Each Contractor and lower tier subcontractor shall make and keep for a period of not less than three (3) years full and accurate records of all laborers, mechanics and other workers employed by them on the project and the records shall include each worker's name, address, telephone number, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day and the starting and ending times of work each day (820 ILCS 130/5) as well as material costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three (3) years after Final Payment. In addition, the Contractor shall make it a condition of all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their Work as set forth herein and that such records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three (3) years after its completion.

Contractor and each subcontractor shall submit monthly a certified payroll to the Owner consisting of (1) the information contained in the preceding paragraph; (2) certification that the records are true and accurate; (3) the hourly rate paid is not less than the general prevailing rate of hourly wages required by the Prevailing Wage Act; and (4) affiant is aware that filing a false certified payroll is a Class B misdemeanor.

Upon two (2) business days' notice, Contractor and each subcontractor shall make such records available to Owner at reasonable business hours at Owner's site.

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. The Contractor shall at all times in performing its services under this Agreement exercise the degree of care and due diligence in a manner equivalent to other highly qualified, experienced and reputable contractors performing similar services for large high schools, national colleges and universities for projects of like size, kind and complexity.

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions including the need for ongoing and uninterrupted operations under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor hereby specifically acknowledges and declares that upon incorporation herein each Contract Document is full and complete through its required level or degree of completion, is sufficient to have enabled the Contractor to make necessary determinations therefrom, including the Cost of the Work and that each of the Drawings, the Specifications and addenda upon incorporation herein is sufficient to enable the Contractor to construct the Work outlined therein. In addition, if the Contractor performs any activity and if it knows or should

have known, exercising the standard of care in Subparagraph 3.1.2 that any of the Contract Documents with respect to such activity contains an error, inconsistency or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction thereof.

§3.2.1.1 To the best of Architect's knowledge, materials and systems known to contain hazardous materials have not been specified or shown in the Contract Documents. The Contractor shall review the Contract Document and notify the Owner and the Architect in writing of any materials and systems shown or specified, which, to the best of Contractor's knowledge, may contain hazardous materials. Except with the Owner's prior written consent, the Contractor shall not incorporate into the Work any materials or systems which to the best of Contractor's knowledge, may contain hazardous materials, even if shown or specified in the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Architect or the Work installed by other contractors, is not guaranteed by the Architect or Owner. In all cases of interconnection of his work with existing work, Contractor shall field measure and 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, locations, or dimensions shall be promptly rectified by him without extra cost to the Owner.

§ 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.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs 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 unless the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor exercising the standard of care provided in subparagraph 3.1.2 shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

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

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

§ 3.3.4 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective method of overall installation.

§ 3.3.5 If any of the Work is required to be inspected or approved by any government authority, the Contractor shall cause such inspection or approval to be performed and coordinate same with the Owner. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part hereof.

§ 3.3.6 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall receive and memorialize all materials and labor entering into the Work site and shall keep full, detailed accounts thereof.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at any time on the Site, any alcohol or controlled substances whether inside or outside of buildings or structures. Possession or use of any of the foregoing at or adjacent to the Site or nearby shall be adequate grounds for the termination of anyone involved in the Work.

§ 3.4.4 The Contractor shall engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. The Contractor shall be liable for all property damage including repairs and replacements of the Work and economic losses which proximately result from the breach of this duty.

§ 3.4.5 The Contractor and any subcontractors shall be required to conform to labor laws of the State and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto. It shall be the duty of the Contractor engaged in this Work to enforce among all personnel directly or indirectly employed by him, all rules which the Owner may establish for conduct of such personnel on the premises. The Contractor shall keep a responsible representative on the Project throughout the Work until Substantial Competition of the Work and until Final completion of the Work unless Owner shall otherwise consent in writing.

§ 3.4.6 The Contractor shall pay, if applicable, not less than the prevailing rate of wages as established, to all laborers, workmen, and mechanics in the performance of Work under this Contract pursuant to an act of the General

Assembly of the State of Illinois entitled, "An Act regulating wages of laborers, mechanics, and other workmen employed under contracts for public works," 820 ILCS 130/0.01 et seq. To determine the current prevailing wage rate see: (IDOL Website). www.state.il.us/agency/idol/rates.hlm/

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be of good quality free from defects in the quality of the Work the Contract Documents. . Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, except modifications necessitated by Contractor's failure to cure, 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 The Contractor shall execute and deliver, before final payment, a written two (2) year Warranty in approved form. The warranty shall be of the complete Work. Portions of the Work that fail during the period of the warranty shall be replaced in whole or in part at no additional cost to the Owner. If Contractor fails to correct defective or nonconforming work, Owner may, but shall not be obligated, to correct it at Contractor's cost, which shall be charged to Contractor. Correction of defective Work shall include all damage done to the Project as a result of corrective action. The period of the Warranty shall be extended for **an additional two (2) year** for those portions of the Work that fail. Work which is repaired or replaced shall be warranted for **two (2) years** following the Owner's written acceptance of the repair or replacement.

§3.5.3 All Work included under this Specification, unless extended elsewhere herein, shall be guaranteed against defect in material and workmanship for a period of two (2) years from the date of final acceptance of the Work as evidenced by the issuance of the Final Certificate of Payment and payment by the Owner. This guarantee and the repair and replacement obligations described in 3.5.5 below are in addition to and not in derogation of Owner's right under law.

§3.5.4 Where any material, process or method of operation or application procedure is required, which, in the opinion of the Contractor, would render the Work unsuitable for the required Warranty, then, before any work is started, such unsuitable process or application method shall be objected to in writing to the Architect and the Owner, stating reasons and recommending other methods so that the Work, when completed, will be suitable for the required Warranty. In the event the Contractor's recommendation is approved, the Work shall be installed in accordance therewith, at no change in the Contract Sum, unless otherwise authorized.

§3.5.5 Any defective Work or material shall be replaced or corrected to the satisfaction of Owner immediately upon notification by the Owner at no cost to the Owner. The guarantee of repair or replacement items shall be renewed for an additional **two (2) year**s upon the completion of the repair or replacement.

§3.5.6 Defective materials, equipment or workmanship occurring within the Warranty period may be repaired, where the repair produces results conforming to Contract requirements relating to appearance, performance and reliability. Where the nature of the defective materials, equipment or workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment or workmanship complying with the Contract requirements. All remedial work shall be subject to the Architect's approval.

§3.5.7 Certain guarantees are required under various sections of the specifications. At the completion of the Work, all such guarantees covering materials, workmanship, maintenance etc., as specified, shall be secured from the various Subcontractors, Materialmen and Manufacturers of the Contractor, and forwarded to the Architect, together with a letter addressed to the Owner summarizing the guarantees, stating the character of the Work, the Subcontractor or Manufacturer, name of material or equipment Seller, period of guarantee and conditions of guarantee. Owner shall be designated as an intended third party beneficiary of any such Guarantee or Warranty. Further, Contractor by executing the Agreement assigns the right of enforcement of all such Guarantees or Warrantees to Owner.

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at no less than monthly or more frequent intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall not be revised without the prior review and approval of the Owner and the Architect. The Construction Schedule is attached hereto and made a part hereof as **EXHIBIT**. The Contractor acknowledges that uninterrupted educational services must be maintained throughout the course of the Project. Contractor shall schedule the Work so as not to cause an interruption of Owner's provision of educational services. Contractor's interruption of the Owner's provision of educational services constitutes a material breach of the contract.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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. The Owner's and Architect's silence to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of his obligations to meet those time limits, nor shall it make the Owner liable for any Contractor damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Owner's silence to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

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

§3.10.4 Should the Contractor fail to adhere to the Construction Schedule, the Contractor shall furnish such additional labor and/or services, or work sufficient overtime as may be necessary to make progress conform to the Construction Schedule at no additional cost to Owner. Failure to adhere to the Construction Schedule, or failure to take steps to regain the Construction Schedule shall constitute a cause for the Owner to take over portions of the Work in accordance with § 2.4.1 or termination and a declaration of default under the terms of the Agreement.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect, and Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed and as a condition precedent to final payment, record documents shall be certified by Contractor that they show complete and exact “as-built” conditions: stating sizes, kind of materials, vital piping and conduit locations and similar matters. All Shop Drawings for HVAC, mechanical, electrical, fire protection (sprinkler and alarm) and plumbing and all record drawings and all Drawings and Specifications for the Work shall be available in hard copy and in compatible approved electronic format.

§3.11.2 The Contractor shall maintain all approved permit drawings in a manner so as to make them accessible to governmental inspectors and other authorized agencies. All approved permit drawings shall be delivered to the Owner within thirty (30) days of final completion of the Work.

§ 3.11.3 Plans and sections of all concealed work, particularly concealed piping and conduit, and deviations from conditions shown on the Contract Drawings, shall be shown and dimensioned on the record drawings. Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§ 3.11.4 The Contractor and his subcontractors shall maintain an accurate record of deviations and changes from the Contract Documents which occur in the work; shall indicate all such deviations and changes on “back grounds” of the Contract Documents; and shall turn over to the Owner upon completion of the work, all such documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and Electrical Contractors shall record all changes or deviations in their work from what appears on the Contract Documents. The “back grounds” of the Contract Documents shall be furnished to the Contractor. The cost of recording and transferring the changes or deviations to the “back grounds” shall be included in the contract price for the respective work including work modified by Change Order. The as-builts shall be delivered by the Contractor to the Owner prior to the final acceptance of the Project and issuance of final payment.

§ 3.11.5 Each Mechanical and Electrical Contractor shall provide the Owner with three (3) copies of all operating manuals at the time of delivery of each major piece of equipment. The Contractor shall promptly provide the Owner with such copies.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

§ 3.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the conditions under which the materials, systems, or equipment will be expected to operate at the Project site. The certification shall be based on performance under the operating conditions at the Project site. The Architect shall be entitled to rely upon the accuracy and completeness of certifications.

§ 3.12.12 After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of those specified in the Contract Documents will be considered only under one or more of the following conditions:

- (a) Required for compliance with local authority interpretation of code requirement or insurance regulations then existing as approved in writing by the Architect.
- (b) Unavailability if specified products through no fault of the Contractor.
- (c) Subsequent information discloses inability of specified precuts to perform property or to fit in designated space.
- (d) Manufacturer/Fabricator refused to certify or guarantee performance of secured product as required.
- (e) When it is clearly seen in the judgment of the Architect that a substitution would be substantially to the Owner's best interest, in terms of cost, time, or other considerations.

Substitution requests shall be written timely and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

§ 3.13.1 USE OF SITE

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

§3.13.2 Contractor agrees that it will take reasonable and necessary steps to minimize the impact of the Work on Owner's education programs, and on nearby and adjacent properties, whether owned by the Owner or other persons or entities. In that regard, prior to the start of construction at the Site the Architect and Owner shall establish a "Site Access and Control Plan;" which upon approval by the Owner shall constitute a Contract Document. The Site Access and Control Plan shall designate all means of ingress and egress to the Site, parking areas, storage areas, staging and temporary facilities and such other matters as the Architect, the Owner or any governmental authority deems relevant and shall be consistent with the other Contract Documents and permit the construction of the Work and execution of the Project as otherwise required hereby. The Contractor shall cause all persons at the Site to comply with the Site Access and Control Plan unless directed otherwise by the Architect, the Owner or any governmental authority, provided however, that notification or direction from a governmental authority in contradiction of the Site Access and Control Plan shall not become a basis for any claim of Change Order for any additional time or cost under the Contract.

§ 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

§3.14.3 Costs resulting from ill-timed cutting and patching shall be borne by the party responsible and shall not be the basis for claims for compensation in excess of the Contract Sum.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall on a daily basis keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Accumulated debris resulting from operations under each Contract shall be removed daily from premises by Contractor responsible for same; or shall be disposed

of as directed by the Owner or Architect. At completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so without notice as required by Article 15 and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Owner, the Architect, and their agents, employees, board members and directors from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and economic or consequential damages, arising out of or occurring in connection with the performance or lack of performance of the Work to the extent that any such claim, damage, loss or expense is caused in whole or in part by any negligence or any act or omission of any Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

§3.18.1.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, protect and hold harmless the Owner, Architect, Architect's consultants and any other person or entity designated by Owner and the trustees, officers, directors, shareholders, board members, partners, representatives, agents, employees of any of them, (collectively, the "Indemnitees") from and against all losses, claims, causes of action, liabilities, injuries, damages and expenses, including but not limited to attorneys' and consultant fees and expenses, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnitees) arising out of, or occurring in connection with, the performance or lack of performance of the Work, breach of the Agreement by Contractor or the acts of omissions of the Contractor, its Subcontractors, sub-subcontractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable regardless of whether or not such loss, claim, cause of action, liability, injury, damage or expense is caused in part by an Indemnitee. Such obligation shall not extend to losses, claims, causes of action, liabilities, injuries, damages or expenses to the extent such result from the negligence or willful misconduct of an Indemnitee. Nothing herein shall be deemed to abridge the rights, if any, of the Owner, Architect or the Contractor to seek contribution where appropriate.

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

§3.18.3 The Contractor agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all judicial actions (including reasonable attorneys' fees related to any such actions) and judgments incurred by the Indemnitees in connection with any labor related activity arising from the Contractor's performance of the Work. As used in these Contract Documents, "labor related activity" includes, but is not limited to, strikes, walk-outs, informational or organizational picketing, use of placards, distribution of hand-outs, leaflets or other similar acts at or in the vicinity of the Project or in the vicinity of any other facility where the Owner conducts business. The

Owner shall advise the Contractor if any labor related activity occurs and the Contractor shall arrange for the legal representation necessary to protect the Indemnitees' interest, provided such representation is approved by the Owner in advance.

§3.18.4 The obligations of the Contractor under this Article shall be deemed to include as an additional liability any injury or damage arising from the failure to use or from the misuse by any Contractor or any Contractor's agents or employees, of any scaffold, hoist, crane, ladder, support, temporary stairwell or other mechanical contrivance erected or constructed by any person or for any other kind of equipment owned, furnished or rented.

§3.18.5 The Contractor shall defend each Indemnitee, through counsel selected by such Indemnitee, which approval shall not be unreasonably withheld, in any action, proceedings or arbitration brought against the Indemnitee by reason of any such claim described in this Paragraph 3.18. The Contractor's obligation to defend an Indemnitee shall not extend to any action, proceeding or arbitration which asserts or alleges only that the injury to the claimant resulted solely from the negligence or misconduct of the Indemnitee and from no other cause or if a final judgment is obtained establishing that such injury to the claimant resulted solely from the negligence or willful misconduct of the Indemnitee, in which latter event Contractor's obligation to defend such Indemnitee shall cease upon the date such judgment becomes final, and such Indemnitee shall thereupon reimburse Contractor for its reasonable attorneys' fees and court costs in so defending such Indemnitee.

§3.18.6 The Contractor expressly agrees that he shall have sole and exclusive responsibility to maintain Site safety. The obligation of the Contractor under this Section 3.18.6 shall be construed to include, but not be limited to injury or damage upon failure to use or misuse by the Contractor, his agents and employees of any scaffold, hoist, crane, stay, ladder, support or other mechanical contrivance erected or constructed by any person or any or all other kinds of equipment, whether or not owned or furnished by the Contractor. The Contractor expressly agrees that it is exclusively responsible for compliance with OSHA and local regulations for construction and that it is the "employer" on this Project within the meaning of those regulations.

§3.18.7 If any claim or lien or stop-notice or any other demand for payment on security therefor, including claims or demands upon performance and payment bond sureties for this Contract, is made or filed with the Owner of the Project by any person claiming that Contractor or any Subcontractor or supplier or any other person claiming under any of them has failed to perform its contractual obligations or to make payment for any labor, services, trust fund contribution, materials, equipment, taxes or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim or lien or stop-notice or other demand for which, if established, the Owner or the Project might become liable, then the Owner shall have the right to retain from any payment then due or thereafter to become due under the Contract or to be reimbursed by Contractor for an amount sufficient to (i) satisfy, discharge and defend against any such claim or lien or stop-notice or other demand, or any action or proceeding thereon which may be brought to judgment or award; (ii) make good any such nonpayment, nonperformance, damage, failure or default; and (iii) compensate the Owner for and indemnify it against any and all loss, liability, damages, cost and expense (including attorneys' and consultants' fees and costs) which may be sustained or incurred in connection therewith.

§ 3.18.8 Contractor shall ensure that its contracts with Subcontractors contain indemnification provisions requiring Subcontractor to provide to Owner, Owner's Representative, Architect, and Architect's Consultants the same indemnifications provided by Contractor to Owner, Architect, and Architect's Consultant pursuant to this Agreement. Owner shall be deemed to be a third party beneficiary of those agreements for purposes of enforcing the Contractor claim waiver and indemnification provision of this Agreement.

§ 3.18.9 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect, or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade. In case the progress of the work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, other material or equipment of equal kind and quality may be provided by the Contractor at no additional cost to the Owner with written approval by the Owner.

§3.18.10 Should any Subcontractor, supplier or other person or Contractor or any of them make, record or file, or maintain any action on or respecting a claim of mechanic's lien, stop-notice, equitable lien, payment or performance

bond or a lis pendens, relating to the Work, the Contractor shall immediately and at its own expense procure, furnish and record appropriate statutory release bonds.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, unless otherwise agreed to by the Owner, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Owner nor the Architect will 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, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Owner's separate contractors, if any shall be through the Construction Manager, if any, or Owner. Any direct communications between the Owner and the Contractor that affect the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Architect, and any such communications that represent a modification of the Contract requirements shall be documented appropriately.

§ 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 with the Owner's prior consent has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority and responsibility to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect's exercise of rights under this paragraph shall not constitute the assumption of a duty for Site safety which is solely and exclusively that of each Contractor.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 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 such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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 which request shall indicate a preferred but non-binding time frame for the response to avoid adverse impacts on the Construction Schedule. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.2.5 Upon request, the Contractor shall provide to the Owner and Architect an executed copy of all subcontracts, purchase orders and other agreements relating to the Work.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

the contrary in this Contract, any part of the Work performed for the Contractor or its Sub-contractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor, which shall be prepared on a master form of Subcontract which the Contractor has, prior to the execution of any such Subcontract (or Sub-subcontractor), submitted for approval to the Architect and Owner, which Subcontract shall contain provisions that (i) require that such portion of the Work be performed in accordance with the requirements of the Contract Documents; (ii) require timely submission of Subcontractor (or Sub-subcontractor, if requested by Owner) payment applications to enable the Contractor to apply for payment in accordance with the provisions of Article 9; (iii) waive all rights the subcontracting parties may have against one another or that the Subcontractor (or Sub-subcontractor) may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.3; (iv) recognize the rights of the Owner pursuant to the Contingent Assignment of Subcontracts under Subparagraph 5.4.1 and require the Subcontractor (upon notice by the Architect or Owner that the Architect or Owner has terminated the Multiple Prime Contractor pursuant to the terms of Article 14, and the Owner has elected, pursuant to Subparagraph 5.4.1 to retain the Subcontractor pursuant to the terms of its Subcontract with the Multiple Prime Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it has been bound to the Multiple Prime Contractor; (v) require the Subcontractor (and Sub-subcontractor) to carry and maintain insurance in accordance with the requirements of the Contract Documents; and (vi) contain no provisions inconsistent with any of the foregoing clauses (i) through (vi) of this Subparagraph 5.3.1.

§5.3.2 The Contractor shall not entertain bid proposals or enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below) unless such Arrangement has been approved by the Owner, after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor, its employees, officers or directors or with respect to which the Contractor, its employees, officers or directors has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor, its employees, officers or directors.

§ 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 in writing; 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 such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors 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 without notice as required by Article 15 and clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive

or order for a minor change in the Work. Any substitution for specified or previously approved materials, equipment, systems or procedures proposed by or through the Contractor shall be effective only upon issuance of a Change Order. The Contractor shall notify the Architect immediately upon becoming aware of the unavailability or improper nature of any previously approved materials, equipment, systems or procedures.

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may at its option refuse the extension of time and have the Contractor perform the work within the original schedule. Contractor shall provided all reasonable costs for completing the work including overtime and acceleration costs as part of its proposal for any Contractor initiated Change Order requesting a time extension.

§ 7.1.5 If a proposal for additional work is requested by the Owner which involves additional time, at the Owner's option, the Owner may extend the completion date for that portion of the work included in the change, without extending the Contract Time for the remainder of the work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, bond and insurance costs.

§ 7.2 CHANGE ORDERS

§ 7.2.1.1 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.

§ 7.2.1.2 Adjustments in the Contract Sum and the Contract Time shall be effected only by a properly executed Change Order. The Contractor and Owner agree that notwithstanding other provisions herein, the combined overhead and profit included in the total cost of any Change Order shall not exceed the following schedule:

- .1 For the Multiple Prime Contractor, for work performed by his own forces, ten percent (10%) of the cost.
- .2 For the Multiple Prime Contractor, for work performed by the Multiple Prime Contractor's subcontractor, five percent (5%) of the amount due to the subcontractor.
- .3 For each Subcontractor or Sub-Subcontractor involved, for work performed by that Subcontractor or Sub-Subcontractor's own forces, ten percent (10%) of the cost.
- .4 Total cost to Owner shall not exceed fifteen percent (15%), regardless of the number of levels of Subcontractors and Sub-Subcontractors involved.

§ 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 subject to the schedule in paragraph 7.2.1.2 :

- .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 7.3.7.

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

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect as approved by the Owner shall determine the method and 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. . In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The time of Substantial Completion is of the essence in this Agreement including, but not limited to, the time of Substantial Completion of each phase or portion of the Project, as set forth in the Construction Schedule.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "business day" shall mean a calendar day, exclusive of Saturdays, Sundays and federal holidays.

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance and bonding required by Article 11 to be furnished by the Contractor and Owner and upon receipt of all permits. 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. The Work shall be Substantially Complete to permit Owner to Occupy the Project for its intended use on or before date stipulated in the Contract Schedule.

§ 8.2.4 The Contractor shall reimburse the Owner for all Architect's fees for additional services necessitated by Contractor's failure to achieve Substantial Completion within the time established in the Agreement and for more than one inspection for each Substantial Completion and Final Completion.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes (other than disputes limited to the work force of, or provided by the Contractor or its Subcontractors), fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control which could not and should not have been anticipated by it; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. No such Change Order extending the Contract Time shall result in any increased payment to the Contractor for any other amounts of any nature, additional time being the Contractor's sole and exclusive remedy.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A copy of such Claim shall be delivered to the Owner and Architect. Contractor shall take all steps reasonably possible to minimize the impact of such delay on the Owner.

§ 8.3.3 In no event shall any delays or extensions of time be construed as cause or justification for payment of extra compensation to the Contractor. Any claims for an increase of the Contract Time shall be made in writing to the Architect within seven (7) days of the cause of delay.

§ 8.3.4 The Contractor shall not be entitled to recover from the Owner or Architect and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay, or disruption in the performance of the Work or any portion thereof for any reason, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§9.1.1 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

§ 9.2 VERIFIED SCHEDULE OF VALUES

Within twenty-one (21) days of Notice of Award, each Contractor shall submit to the Architect a verified Schedule of Values allocated to various portions of the Work, identifying by name and address all Contractors, Subcontractors and others furnishing materials indicating the amount due or to become due in accordance with 770 ILCS 60/5 and with each pay application certified payroll records of labor under the contract in accordance with the Prevailing Wage Act reporting requirements as set forth in 820 ILCS 130/5(a), before any payments are required to be made. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may request.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Subject to the other terms and conditions regarding payment contained in this Contract, no later than the 13th day of each month, each Contractor shall submit to the Architect and the Owner an itemized Application for Payment in draft form covering payments through the end of such month together with such substantiating data as the Owner and the Architect may require, including but not limited to draft lien waivers, sworn statements, individual labor time cards and information necessary to comply with the Prevailing Wage Act, billing records, invoices and requisitions and reflecting retainage as provided in this Contract. The Owner and the Architect shall review and comment upon such draft submittals. Then, not later than the 18th day of the month, the Contractor shall deliver to the Architect and the Owner its actual Application for Payment together with appropriate back-up. In addition, such Application for Payment shall contain a certification by each of the Trade Contractors that there are no written claims of mechanics' or materialmen's liens with respect to the Work, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of such Application for Payment, that there is no known basis for the filing of any mechanics' or materialmen's liens on the Work, and that waivers from all Subcontractors and Sub-Subcontractors constitute an effective waiver of lien under the laws of Illinois to the extent of payments that have been made or with respect to payments that will be made concurrently with such Application for Payment. The Architect shall not certify any payment for a period of at least five (5) days after receipt of an Application for Payment or until any and all objections to payment made by the Owner have been satisfactorily resolved. THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR, 770 ILCS 60/5. Owner intends to make payment in reliance upon the accuracy of the verified schedule of values.

§ 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for

Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. This paragraph shall not be construed as relieving each Contractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of any damaged or improperly placed Work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

§9.3.4 The first payment request shall be accompanied by Contractor's Partial Waiver of Lien only, for the full amount of the payment. Each subsequent monthly payment request shall be accompanied by the Contractor's Partial Waiver for the full amount of the payment, and by the partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment request, to the extent of that payment. The above waivers requirements shall not affect the duty of the Contractor to pay each Subcontractor and for each Subcontractor to promptly pay each Subsubcontractor each month the amount to which he is entitled. Request for final payment shall be accompanied by Final Waivers of Lien from each Contractor, all Subcontractors and Suppliers of material who have not previously furnished such final waivers. Final waivers shall be for the full amount of the contract.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's actual Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, exercising professional skill and care, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.4.3 All applications for payment shall be accompanied by affidavits from the Contractor and Subcontractors containing such information and in such form as approved by Owner. With respect to each payment being made to any Contractor, Subcontractor or Materialman, the application shall be accompanied by a Waiver of Lien, either partial and/or final, duly executed by the persons who receive the payment and as shown on such affidavits, which Waiver of Lien shall be in a form approved by Owner.

§9.4.4 Not later than the last day of each calendar month the Owner will make partial payments to Contractor, on the basis of duly verified and approved Contractor's applications and Estimate of Work performed during the preceding calendar month under the Contract, but to insure the proper performance of Contracts, the Owner will retain ten percent (10%) of the amount of each estimate. Owner reserves the right to reduce the amount of retainage at 50% completion subject to the review and approval of Architect and Surety; and at any time, the Owner reserves the right to restore retainage to a full ten percent (10%) of the total work performed and certified by Architect. No interest shall be paid on retention.

§9.4.5 All sworn Statements and Waivers shall be submitted along with payment request not later than the 18th day of the month for work and materials supplied through and including the end of the prior calendar month. If the waivers and affidavits are submitted within the time required above, the Architect will promptly and in no event later than sixty (60) days after the receipt thereof notify the Contractor of the Owner's objection to any waiver or affidavit furnished. The Contractor shall thereafter supply another waiver or affidavit to remedy the defects objected

thereto and in no event later than eighteen (18) days after the first of the month following the end of the preceding month for which the affidavit and waiver was applicable. Failure of the Contractor to supply all of the affidavits and waivers in form acceptable to the Owner within the time required above shall be grounds for withholding the entire progress payment for all work and material furnished for the prior month until the next progress payment would become due and all acceptable affidavits and waivers are furnished. Subject to the above conditions, no partial payments on a monthly progress payment application by Contractor will be made if all of the sworn statements and waivers are not acceptable to Owner and are not supplied to the Architect within the time required above.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 actual or threatened 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 material failure to comply with any provision of the Contract Documents.

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

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

§9.5.4 If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor shall nevertheless expeditiously continue to perform the Work.

§9.5.5 At the election of the Owner, in lieu of the Owner's remedy described in Subparagraph 9.5.1 above, a sufficient sum may be retained by the Owner as determined to be necessary for the purpose of setting aside a reasonable reserve to fully correct the loss or to protect the Owner from the loss for the items above set forth.

§9.5.6 The Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action or the Work for which payment is being withheld shall have been rejected by any governmental authority.

§9.5.7 If, at any time, there should be evidence of any liens or claims for which, if established, the Owner will become liable and which would be chargeable to the Contractor, the Owner shall have the right to retain, out of any payment due or thereafter to become due an amount sufficient to completely indemnify the Owner against such lien or claim. Should there prove to be any such lien or claim after all payments are made, the Contractor shall repay the Owner all sums which the Owner may be compelled to pay in discharging such lien or claim, including any legal fees or other costs resulting from the lien or claim.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Architect's Certificate of Payment shall be processed and forwarded to the Owner within seven (7) days after the Architect's receipt of the Contractor's actual Application for Payment. The Owner shall make payment to the Contractor of the amount specified in the Certificate for Payment (which shall provide for all applicable retentions) on or before the 20th day of the following month. Such payment by the Owner shall not constitute approval or acceptance of any item of cost in the Application for Payment. The Owner shall make no payment until the Owner has received from the Contractor original sworn statements and lien waivers for the portion of the Work covered by such payments current through the period covered and trailing lien waivers for the portion of the Work covered by such payments current through the period covered and lien waivers from Sub-Subcontractors and Materialmen current through not more than 30 days prior to the period covered by such payment.

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

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

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

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents or relieve Contractor of any of its obligations hereunder with respect thereto.

§ 9.6.7 Contractor shall provide the Owner with a payment bond in the full penal sum of the Contract Sum. , Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner..

§9.6.8 Notwithstanding any other provision to the contrary, the Owner reserves the right to make payment directly to any Subcontractor of the Contractor (or jointly to the Contractor and Subcontractor) in such amounts as the Owner determines to protect the Owner's interest from a lien or asserted lien or other claim, and the amount owed the Contractor shall be reduced by the amount of any such payment by the Owner. Exercise of this option shall not create any claims or rights by any Subcontractor or any other party against the owner or the Owner's funds.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within ten (10) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ten (10) days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the foregoing, the Contractor shall not stop the Work, nor shall the Contract Time or Contract Sum be increased during the pendency of a bona fide dispute between the Owner, Architect and 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 so that the Owner can occupy or utilize the Work for its intended use. The Work or phase of the Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of the Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract or phase of the Contract are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) calendar days or as agreed upon following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work may be as mutually acceptable to the Owner and the Contractor. The Contractor shall secure and deliver to the Architect written warranties and guarantees from its Subcontractors, Sub-Subcontractors and Suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier. If in the event Contractor does not complete remaining work within thirty (30) days of Substantial Completion, Owner shall give the Contractor written notice of the remaining Work to be completed. If the Contractor fails to complete the remaining work to be completed within seven (7) days of receipt of the written notice, the Owner reserves the right to complete the remaining Work in accordance with 2.4 without further notice to the Contractor. All costs incurred by Owner to complete punch list work therein shall be offset against Contractor's final payment.

§ 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 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.

§ 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and

submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner (6) a final Contractors sworn statement from the Contractor duly executed and acknowledged showing all Subcontractors to be fully paid, and similar final sworn statements from Subcontractors and, where appropriate, from Sub-Subcontractors, and final waivers of lien covering all Work and (7) such other information or documentation as Owner may require. 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. If such lien 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 such lien, 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 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; or
- .3 terms of 'call back 'warranties and special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

Each Contractor shall be solely and exclusively responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of its Work on the Contract. Neither the Owner nor the Architect is responsible for safety precautions and programs in connection with the performance of the Work under the Contract. Each Contractor shall be responsible for coordinating safety precautions and programs as between separate Contractors.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. If the Contractor fail to give such notices, or fail to comply with such laws, ordinances, rules, regulations and lawful orders, it shall be liable for and shall indemnify and hold harmless the Indemnitees as provided in Subparagraph 3.18.

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

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

§ 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, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. Prior to commencing construction at the Site, each Contractor shall submit to the Architect and Owner its written safety plan for the Site (the "Safety Plan") which Safety Plan shall set forth Contractor's proposed safeguards for the Work performed by its forces, coordination with other multiple primes and the safeguards for the Site such as, periodic safety meetings, safety inspections, posted rules and shall provide Architect and Owner with monthly updates to the Safety Plan evaluating the status thereunder. In addition, the Contractor shall immediately notify the Architect and Owner of any accidents, injuries or losses at the Site or associated with the Work but in any event within twenty-four (24) hours of such occurrence with a detailed written report within three (3) business days thereof.

§ 10.2.7.1 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.

§10.2.7.2 The Contractor shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways or other devices required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

§10.2.7.3 The Contractor shall maintain Work, materials and apparatus free from injury or damage from flood, rain, wind, storms, frost, cold or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease the Work and notify the Architect and Owner of such cessation. The Contractor shall not permit open fires on the Project Site. In addition, the Contractor shall, at its sole cost and expense promptly repair any disturbance to walls, utilities, sidewalks, curbs, roadways and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable and clean 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately.

§ 10.3.3

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

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

§10.3.6 The Contractor shall review the Contract Document and promptly notify the Owner and the Architect in writing of any materials and systems shown or specified, which, to the best of Contractor's knowledge, contain hazardous materials.

§10.3.7 Except with the Owner's prior written consent, the Contractor shall not incorporate into the Work any materials or systems, which to the best of Contractor's knowledge, contain hazardous materials, even if it is shown or specified in the Contract Documents.

§ 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 LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations 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:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's and Subcontractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- .9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 - a. Operations and Premises Liability (including Elevator Liability, if applicable);
 - b. Independent Contractor's Protective Liability;
 - c. Completed Operations and Products Liability (maintained in effect for a period of four (4) years after the date of final payment);
 - d. Personal Injury Liability;
 - e. Broad Form Property Damage Liability endorsement, with exclusions "X", explosions, "C", Collapse, and "U", underground deleted;
 - f. Contractual, including specified provisions for the Contractor's indemnification obligation hereunder;
 - g. Owned, non-owned and hired motor vehicles;
 - h. Broad form property damage, including completed operations;
 - i. Errors and Omissions Coverage (for design/build or performance portions of the Work, if applicable);
 - j. Blanket Contractual Liability (applicable to the Contractor's obligations under Paragraph 3.18);
 - k. Personal and Advertising Injury; and
 - l. Umbrella excess liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract

Documents. Contractor shall maintain, at its own expense, the following insurance coverages on an occurrence basis insuring the Contractor, his employees, and agents, and the Indemnities as required herein which insurance shall be placed with insurance companies rated at least "A", "VI" by Best's Key Rating Guide and shall incorporate a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation or non-renewal of any such policies.

§11.1.2.1 Contractor's Liability Insurance The Contractor shall not commence Work under this Contract until all insurance required herein is obtained and approved by the Architect and Owner; similarly, nor shall the Contractor allow any Subcontractor to commence any portion of the Work.

§11.1.2.2 Comprehensive General Liability Insurance (including limited form contractual liability and completed operations, explosion, collapse and underground hazards), covering personal injury, bodily injury and property damages (including a 'subcontractor's exception to the 'your work' exclusion) in the amount of Two Million Dollars (\$2,000,000) covering personal injury, bodily injury and property damage.

§11.1.2.3 Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000) covering personal injury, bodily injury and property damage.

§11.1.2.4 Workmen's Compensation Insurance in the amounts required by law.

§11.1.2.5 Contractual Liability: Bodily injury, Property Damage Two Million Dollars (\$2,000,000) each occurrence, combined single limit, annual aggregate.

§11.1.2.6 Each Contractor shall provide umbrella or excess of loss coverage for Employer's Liability, Comprehensive General Liability and Auto Liability of not less than Two Million Dollars (\$2,000,000) over primary insurance.

§11.1.2.7 Contractor shall submit valid certificates and, if requested, policies and endorsements, in form and substance satisfactory to Owner and Architect evidencing the effectiveness of the foregoing insurance policies along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Contractor commences the rendition of any services hereunder. In addition, Contractor shall attach to the certificate of insurance Best's current rating of said insurers.

§11.1.2.8 Contractor shall have the Owner and Architect added as additional insureds to the proceeding comprehensive General Liability Insurance policy, Auto and where necessary, Excess Policy. The insurance policies shall be endorsed to indicate that they are primary as respects the Owner and not contributory with any other insurance available to the Owner.

§11.1.2.9 To the fullest extent permitted by law, the Contractor hereby agrees to indemnify and hold the Owner and Architect and their directors, members, officers, agents, and employees (collectively the "Indemnities") harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees, that the Indemnities may incur by reason for any injury or damage sustained to any person or property (including, but not limited to any one or more of the Indemnities) arising out of or occurring in connection with the negligent performance or lack of performance by the Contractor of his duties and obligations under or pursuant to this Agreement.

§11.1.2.10 The Contractor hereby agrees to maintain the insurance described in subparagraphs 11.1.2.1 through 11.1.2. 5 herein during the term hereof and for such longer periods as may be set forth in said subparagraphs. If the Contractor fails to furnish and maintain the insurance required herein, the Owner may after written notice to Contractor purchase such insurance on behalf of the Contractor, and the Contractor shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

§11.1.2.11 Contractor shall insure specifically the indemnity contained in subparagraph 11.1.2.9 of this Agreement, and shall include the Indemnities as additional insureds by causing amendatory riders or endorsements to be attached to the insurance policies described in subparagraphs 11.1.2.1 and 11.1.2.2. The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Indemnities. Said amendatory riders or endorsements shall indicate that as respects the Indemnities, there shall be severability of interests under said insurance policies for all coverages provided under said insurance policies.

§ 11.1.3 Failure of either the Architect or Owner to demand Certificates of Insurance and/or policies shall not constitute a waiver of the contractor's responsibility hereunder. Nor shall review and/or approval by either the Owner or Architect in any way relieve Contractor of its responsibility for furnishing sufficient amounts and coverages of insurance. Said endorsements or amendatory riders shall indicate that as respects said additional insureds, there shall be severability of interests under said insurance policies. The Certificates and amendatory riders or endorsements shall clearly indicate the specific coverage (including contractual liability for the Contractor's obligation under 3.18) and shall contain provision requiring the giving of written notice to Architect Manager and Owner at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies, as evidenced by return receipt of United States Certified Mail.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, 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 without optional deductibles. 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 as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, 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, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If by the terms of this insurance any mandatory deductibles are required, or if the Owner elects to increase the mandatory deductible amounts or purchase insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the deductibles in the event of a paid claim. The Contractor shall carry whatever additional insurance he may deem necessary to protect himself against hazards not covered by the Builder's Risk Insurance, including theft.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Owner's insurance shall not cover portions of the Work stored off the site unless expressly agreed to by the Owner in writing. The off site Work to be insured must be clearly identified as Owned by Owner and the location is approved by Owner. This insurance will not cover equipment such as tools owned by mechanics or tools, sheds, hoists, canvasses, tarpaulins, mixers, scaffolding, shoring, apparatus, machinery staging and towers owned or

rented by Contractor and other similar items commonly referred to as construction equipment. At the Contractor's option and expense he may carry theft or other coverage insurance not included in the above coverage, on materials which are in his possession for this Project.

§ 11.3.1.5 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.

§11.3.1.6 Liability of Contractor and Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or the liability of the Architect, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liabilities, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the Architect's, Contractor's or any Subcontractor's insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§11.3.6.1 SUBCONTRACTOR'S OBLIGATION TO OBTAIN INSURANCE. The Contractor shall require that every Subcontractor of any tier obtain insurance of the same character as the Contractor, naming the same Additional Insureds as the insurance required of the Contractor. Before the commencement of any Work by any Subcontractor of any tier, the Contractor shall obtain and furnish the Owner and Architect with Certificates of Insurance naming the Owner, Architect, and all of their officers, directors, commissioners, officials, employees, consultants, volunteers and agents, as Additional Insureds on the insurance required to be obtained by each Subcontractor of any tier. Failure to submit such a certification signed by each Subcontractors shall be grounds to withhold payment in full or in part.

§11.3.6.2 Certificate of Insurance Requirements. All Certificates of Insurance and all insurance policies required to be obtained the Contractor and every Subcontractor of any tier shall provide that coverages afforded under the policies will not be canceled, reduced or allowed to expire without at least thirty (30) days prior written notice given to the Architect and Owner. If any of the insurance coverages are required to remain in force after final payment, all additional Certificates evidencing continuation of such coverage shall be submitted with the final application for payment.

§11.3.6.3 Failure to Comply with Insurance Reporting Provisions. All insurance required of the Contractor and all Subcontractors of any tier shall provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, directors, commissioners, officials, employees, consultants, volunteers or agents.

§11.3.6.4 Insurance Obtained Shall be Primary Insurance. All insurance required the Contractor and all Subcontractors of any tier shall state that the coverage afforded to the Additional Insureds shall be primary insurance of the Additional Insureds with respect to claims arising out of operations performed by or on their behalf. If the Additional Insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. 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.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Each Contractor, within ten (10) days after receiving notice of the award, shall furnish a Performance Bond and a Payment Bond in the full amount of the Contract agreeing to perform the work and fulfill all obligations in

accordance with all of the provisions of the contract with a Surety rated no less than A, VI, by Best's Insurance Guide Key.

§ 11.4.2 Before commencing the Work, Contractor shall submit to Owner and Architect the bonds. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§11.4.3 The Performance Bond and Labor and Material Bonds shall be executed in conformity with American Institute of Architects, Doc. A311 (February, 1970 Edition) or forms approved by Owner. A certified copy of the power of attorney from the surety company stating that the person executing the bond is duly authorized by the Surety to execute the bond shall accompany the bond.

§11.4.4 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the surety of the Contractor shall be responsible to make full payment to the Owner and Architect any and all extra work and accounting and other expenses incurred by the Owner and Architect as a result of a Contractor's default and to pay the Owner all attorneys' fees in addition to paying additional construction management expenses, testing, consulting, engineering, accounting and court costs incurred by Owner as a result of a Contractor's default and in protecting the Owner's right under the agreement with the Contractor to remedy the Contractor's default or honor the terms of the Performance Bond. The provisions of this clause for charging of costs, fees and extra work against the Contractor shall apply to Subparagraphs 2.4, 14.2.1 and 14.2.2 as though expressly included therein.

§11.4.5 It shall be the duty of the Surety to give an unequivocal notice in writing to Owner within ten (10) days after receipt of a declaration of default of the Surety's election either to remedy the default or defaults promptly or to perform the contract promptly or to pay to Owner the penal sum of the bond, time being of the essence. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to Owner immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the contract. The Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the contract. If the Surety reasonably requires additional time to investigate the declaration of default, Surety shall within the foresaid ten (10) days so notify the Owner. In such case, the Owner may, without prejudice to its rights under the performance bond, continue construction of the Work with a temporary completing contractor on a time and material basis and charge the costs of such work to the Surety. Upon completion of the Surety's investigation, the Surety may exercise its rights otherwise contained herein.

§11.4.6 As the Work is completed by a completing contractor engaged by Owner in accordance with the terms of the Contract Documents, to the extent that any portion of the Contract Price remains owing after setoff, Owner shall pay completing Contractor in accordance with the Schedule of Values as certified by the Architect. Upon the completion of the Work pursuant to the Agreement, if any funds remain due on said Contract, the same shall be paid to Surety. Upon completion of the Work pursuant to the Agreement, if there is any shortfall in the funds remaining due under said Contract, Surety shall make the Owner whole to the extent of the penal sum of the bond.

§11.4.7 The said Principal and Surety further agree as part of this obligation to pay all such damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to, all repair and replacement costs necessary to rectify construction error, all architectural and engineering costs and fees, all consultant fees, construction management fees and expenses, all testing and laboratory fees, and all legal fees and litigation costs incurred by Owner as a result of the default.

§11.4.8 The Surety agrees that other than as is provided in this Bond it may not demand of Owner that Owner shall (a) perform any thing or act, (b) give any notice, (c) furnish any clerical assistance, (d) render any service, (e) furnish any papers or documents, or (f) take any other action of any nature which is not required of Owner to be done under Contract Documents. Any provisions contained within the bonds creating any condition precedent for the Owner not otherwise required herein, or abrogating owner's rights or remedies otherwise available in contract, law, or equity are void.

§11.4.9 In the event the Surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the

opinion of the Owner be insolvent the Contractor agrees forthwith upon request of the Owner to furnish and maintain other corporate surety with respect to said Bonds satisfactory to the Owner. No further payment shall be deemed due nor shall be paid to the Contractor until new performance and payment bonds are in place.

§11.4.10 In case of any conflict between any provision of the Performance Bond and the Contract Documents, the provisions of the Contract Documents shall prevail.

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 Owner's or 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 Owner or Architect has not specifically requested to examine prior to its being covered, the Owner or 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within **two (2) year** after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The **two (2)-year** call back warranty period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The **two (2) -year** call back warranty period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 provided, however, that the **two year period** shall be extended for an additional **two years** for those portions of the Work that fail.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the **two (2)-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. Approval of any material or Work at any time during construction will not prevent its subsequent rejection for failure to conform to the requirements of the Contract Documents. No election by the Owner to correct Work shall constitute a waiver of any obligation of a surety upon its performance and labor and material payment bonds.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1.1 GOVERNING LAW

The Contract shall be governed by the law of the Illinois. The Work shall comply with all applicable laws, statutes, ordinances, codes, rules, regulations or orders during its performance and completion. Historical lack of enforcement of any local law shall not constitute a waiver of the Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

§13.1.2 PREVAILING WAGE ACT

The Contractor shall pay not less than the prevailing rate of wages as established, to all laborers, workmen, and mechanics in the performance of the Work under this Contract in accordance with "An Act regulating wages of laborers, mechanics and other workmen employed under contracts for Public Works." 820 ILCS 130/1 et seq.

§13.1.3 HUMAN RIGHTS ACT

To the extent required by law, Contractor shall comply with the terms and procedures of the Illinois Human Rights Act. 775 ILCS 10/0.01 et seq. To the extent required by law Contractor agrees as follows:

.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.

.2 That, if it hires employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.

.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

.6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

.7 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such Subcontractors; and further it will promptly notify the contracting agency and the Department in the event any Subcontractor fails or refused to comply therewith. In addition, the Contractor will not utilize any Subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

§13.1.4 NOT BARRED

The Contractor by submitting its bid certifies that the Contractor is not barred from bidding on the contract as a result of a conviction for either bid-rigging or bid rotating. 720 ILCS 5/33/E-11.

§13.1.5 DRUG AND TOBACCO FREE WORKPLACE

The Contractor by submitting its bid certifies that it will provide a drug free and tobacco free workplace and that it is in compliance with the requirements of the Drug Free Workplace Act, 30 ILCS 580.1 et seq.

§13.1.6 SEXUAL HARASSMENT POLICY

The Contractor by submitting its bid certifies that it has a written sexual harassment policy which includes (i) the illegality of sexual harassment; (ii) a definition of sexual harassment; (iii) a description of sexual harassment, utilizing examples; (iv) an internal complaint process including penalties; (v) the legal recourse, investigative and complaint process through the Illinois Department of Human Rights; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation for exercising rights under the policy in accordance with 775 ILCS 5/2-105(A)(4).

§13.1.7 The invalidity of any covenant, restriction, condition, limitation, or any other part or provision of the contract documents shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of the contract document.

§13.1.8 CRIMINAL BACKGROUND CHECK To the extent that any person employed by Contractor or its Subcontractors shall have direct daily contact with students in the college, each such employee shall submit to a Criminal Background Check and the Statewide Sex Offender Data Base at Owner expense. Under no circumstances shall any Contractor or Subcontractor employ any person on this Project which is barred from student contact pursuant to 105 ILCS 5/10-21.9.

§ 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 such 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 such assignment.

§ 13.3 WRITTEN NOTICE All notices given under the Contract Documents shall be in writing and shall be deemed properly served upon receipt if delivered in person, the next business day if delivered by recognized overnight courier or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as set forth on the cover page of the Contract or to such other address or addresses as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the 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 13.5.3, shall be at the Owner's expense.

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

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing in accordance with 815 ILCS 205/2..

§ 13.7 TIME LIMITS ON CLAIMS

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to promptly supply enough properly skilled workers to diligently prosecute the Work or provide proper materials for the Work;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents, or
- .5 the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become his due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency;
- .6 Contractor abandons the Work, submits a sworn statement which is intentionally false, or a mechanic's lien or notice of lien is filed against any part of the Work or the site of the Project.
- .7 the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of a governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or
- .8 the Owner without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, may, after giving the Contractor and the Surety under the Performance Bond and under the Labor and Material Payment Bond described in Paragraph 11.4 seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of the days from the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove and store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Such costs shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another Contractor or other Subcontractors, any additional interest or fees which the Owner or Architect must pay by reason of a delay in completing of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination..

ARTICLE 15 CLAIMS AND DISPUTES DURING CONSTRUCTION

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract during the course of construction. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract during the course of construction. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS DURING CONSTRUCTION

Claims during the course of construction by Contractor must be initiated by written notice to the other party and to the Architect as Initial Decision Maker. Claims by Contractor must be initiated within 21 days after occurrence of

the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims during the course of construction, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, 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, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract upon agreement of the parties shall be subject to mediation. All parties shall carry on the Work and perform their duties during any mediation proceedings, and the Owner shall continue to make payments as required by the Contract Documents.

§ 15.3.2 Unless agreed to otherwise by the parties, Mediation 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. If mediation is agreed to by the parties binding dispute resolution 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 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

§ 15.4.1.1 During construction and after construction, at the sole discretion of the Owner, all claims, disputes and other matters in question between any of the Architect, Owner, Contractor, Subcontractor or any Material Supplier arising out of, or relating to, agreements to which two or more of said parties are bound, or the Contract Documents or the breach thereof, except as provided in subparagraph 2.6.19 with respect to the Architect's decisions on matters relating to aesthetic effect, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtain, as modified herein. At least one member of the arbitration panel shall be an attorney whose practice is primarily focused on the construction industry. In any such arbitration, the arbitrator shall make separate findings as to liability and the amount of damages with respect to each party to the arbitration to the extent any liability or responsibility for damages exists. The Architect, Subcontractors and Material Suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The Owner's contracts with the Architect and the Contractor's subcontracts with the Subcontractors and Material Suppliers, shall require such joinder. The arbitrator shall have authority to decide all issues between the parties including but not limited to claims for extras, delay and liquidated damages, matters involving defects in the Work, right to payment, whether matters decided by the Architect involve aesthetic effect and whether the necessary procedures for arbitration have been followed. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons, duly consented to by the parties, shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§15.4.1.2 Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraph 9.10.5, may, with the Owner's consent, be subject to arbitration. Prior to arbitration, the parties may, with the

Owner's consent, endeavor to resolve disputes by mediation unless otherwise agreed in writing, all parties shall carry on the work and perform their duties during any mediation or arbitration proceedings.

§15.4.1.3 In addition to the other rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

.1 Promptly upon the filing of the arbitration each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law;

.2 All parties to the arbitration shall be entitled to reasonable discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable to discovery. Such discovery shall be noticed, sought and governed by those provisions of Illinois law;

.3 The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein. Similarly, the scope of discovery, and the extent of proceedings hereunder relating to discovery, shall be consistent with the parties' intent that the arbitration be conducted as expeditiously as possible.

.4 The arbitrator(s) shall apply the law of Illinois and the terms and conditions of the Contract Documents and this Agreement.

.5 These additional rules shall be implemented and applied by the arbitrator(s).

§ 15.4.1.4 Claims and Timely Assertion of Claims. In the event of any litigation or arbitration between the parties hereunder, all attorneys' fees and other costs incurred shall be borne by the party determined to be at fault and in the event that more than one party is determined to be at fault, shall be allocated equitably by the court or arbitrator.

§ 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 Either party, at its sole discretion, 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).

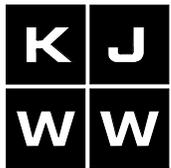
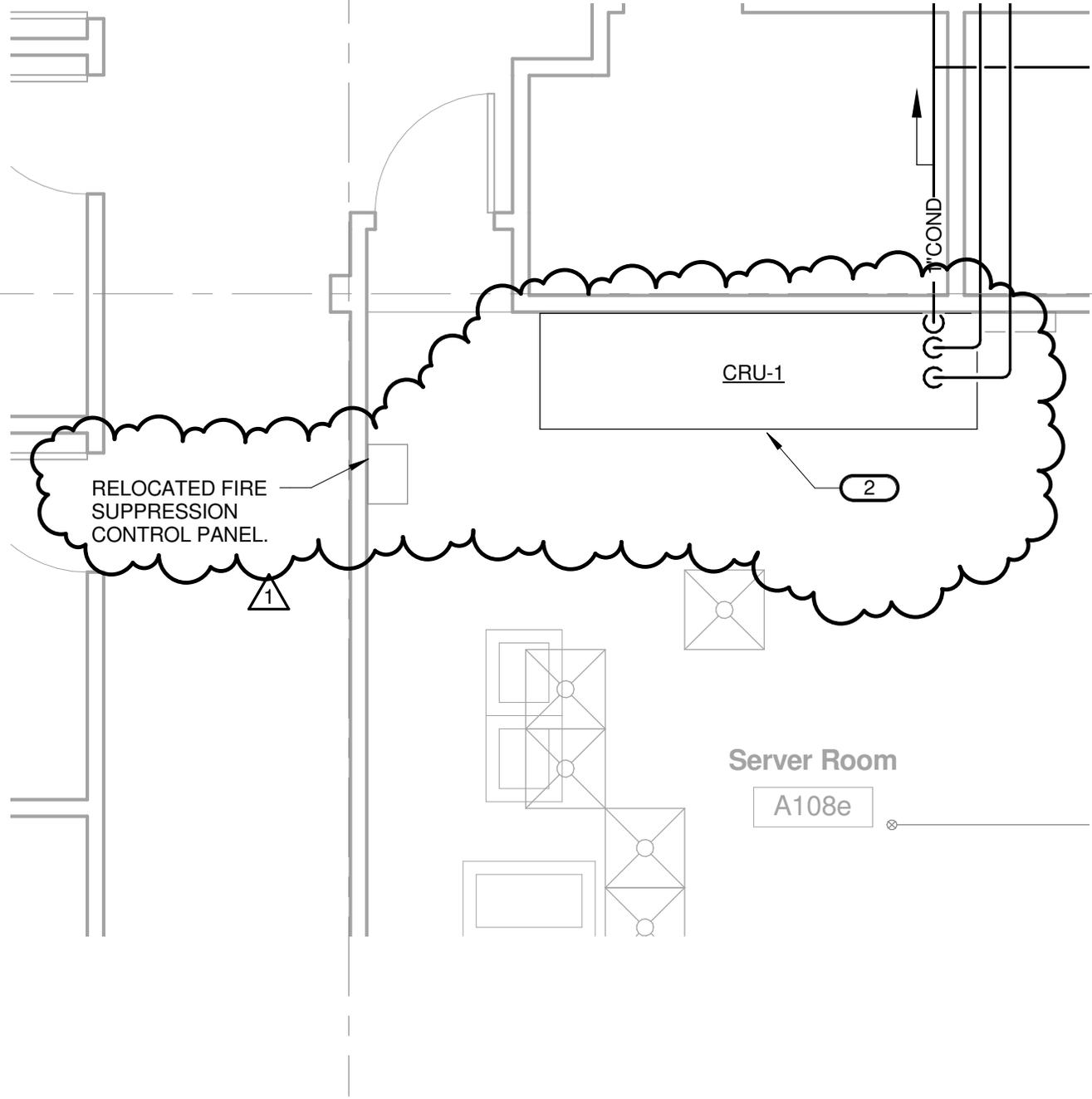
§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such 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, Architect, 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 the Owner and Contractor under this Agreement.

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McHenry Country College - Server Rooms Improvements

KJWW No. 1127.02 Date: 11/21/11

Ref. Sheet: M1.1 Issue: ADDENDUM 1

Ref. Description: FIRST FLOOR PLAN - BUILDING A - MECHANICAL

Supplemental Drawing
Number

MSK-01