

AIA® Document A101® – 2017

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

AGREEMENT made as of the Twelfth day of June in the year Two Thousand Twenty-five
(In words, indicate day, month and year.)

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

Franklin Community Schools
7157 W 200 N
Franklin, IN 46131

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

Ellis Mechanical, Inc.
2929 Bluff Road
Indianapolis, IN 46225

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

Franklin Middle School Boiler Replacement
625 Grizzly Cub Dr.
Franklin, IN 46131
SAI Project# 2022-024.MSB

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

Schmidt Associates
415 Massachusetts Avenue
Indianapolis, IN 46204

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☒ [X] The date of this Agreement.
- ☐ [] A date set forth in a notice to proceed issued by the Owner.
- ☐ [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

§ 3.3 Substantial Completion

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

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

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

[X] Substantial Completion shall be accomplished by before winter of 2025.

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

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
|-----------------|-----------------------------|

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Seven Hundred Thirty-four Thousand and 00/100 Dollars (\$ 734,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item | Price |
|-----------------------------------|-----------|
| Alternate No. 1 – Hot Water Pumps | \$158,000 |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
|------|-------|---------------------------|

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

| Item | Price |
|-----------------------|----------|
| Contingency Allowance | \$25,000 |

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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

§ 4.5 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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

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

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

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

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

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

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

§ 5.1.6 Retainage

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

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

As indicated in the AIA Document A201.

§ 5.1.6.1.1 The following items are not subject to retainage:

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

§ 5.1.6.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

The Owner shall retain amounts from each progress payment as indicated in the AIA Document A201.

§ 5.1.6.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

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

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

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

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

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

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

The method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☒ [X] Litigation in a court of competent jurisdiction

☐ [] Other (*Specify*)

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

(*Name, address, email address, and other information*)

David Clendenning, Superintendent
Franklin Community Schools
7157 W 200 N
Franklin, IN 46131

§ 8.3 The Contractor's representative:

(*Name, address, email address, and other information*)

Tim Brabender
Ellis Mechanical, Inc.
2929 Bluff Road
Indianapolis, IN 46225
tim@ellismechanicalinc.com

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document G203™–2022, BIM Execution Plan, AIA Document E202-2022 BIM Exhibit for Sharing Models with Project Participants, where models may not be enumerated as a Contract Document and a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)

- .5 Drawings: As bound in the Drawings Set dated 04/30/2025
- .6 Specifications: Divisions 01-33 as indicated in the Table of Contents of the Project Manual dated 04/30/2025.
- .7 Addenda, if any:

| Number | Date | Pages |
|----------------|------------|---------|
| Addendum No. 1 | 05/19/2025 | 5 pages |

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

- .8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[X] AIA Document E202-2022 BIM Exhibit for Sharing Models with Project Participants

[] Supplementary and other Conditions of the Contract:


| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

- .9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding

or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)


1. Reference Division 00 Documents of the Project Manual dated 04/30/2025:
 - a. Form 96 "Contractor's Bid for Public Work"
 - b. 004113 Supplemental Bid Form
 - c. Subcontractor and Products
 - d. Performance Bond and Payment Bond (AIA A312)
 - e. e-Verify Affidavit

This Agreement entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Agreement, and one to be retained by the Owner.



OWNER (Signature)
 Becky Nelson
 Board of School Trustee, President

 (Printed name and title)

Signed by:


CONTRACTOR (Signature)
 Tim Brabender President

 (Printed name and title)

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:10:32 EDT on 06/27/2025.

Changes to original AIA text

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AGREEMENT made as of the -Twelfth_ day of - June- in the year Two Thousand Twenty-five

Schmidt Associates

415 Massachusetts Avenue

Indianapolis, IN 46204

PAGE 3

[X] ~~By the following date:~~ Substantial Completion shall be accomplished by before winter of 2025.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Thirty-four Thousand and 00/100 Dollars (\$ 734,000.00), subject to additions and deductions as provided in the Contract Documents.

| Item | Price |
|--|------------------|
| <u>Alternate No. 1 – Hot Water Pumps</u> | <u>\$158,000</u> |

| Item | Price |
|------------------------------|-----------------|
| <u>Contingency Allowance</u> | <u>\$25,000</u> |

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~~§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~

~~§ 5.1.4~~

§ 5.1.3 Each Application for Payment shall be based on the most recent schedule of values submitted by the

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

~~§ 5.1.54~~ Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

~~§ 5.1.65~~ In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

~~§ 5.1.65.1~~ The amount of each progress payment shall first include:

~~§ 5.1.65.2~~ The amount of each progress payment shall then be reduced by:

~~§ 5.1.76 Retainage~~

~~§ 5.1.76.1~~ For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

~~§ 5.1.76.1.1~~ The following items are not subject to retainage:

~~§ 5.1.76.2~~ Reduction or limitation of retainage, if any, shall be as follows:

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~~§ 5.1.7~~ The Owner shall retain amounts from each progress payment as indicated in the AIA Document A201.

~~§ 5.1.6.3~~ Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

~~§ 5.1.87~~ If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

~~§ 5.1.98~~ Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

~~For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the~~
~~The~~ method of binding dispute resolution shall be as follows:

~~[] — Arbitration pursuant to Section 15.4 of AIA Document A201-2017~~
~~[]~~

☒ [X] Litigation in a court of competent jurisdiction

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~~§ 7.1.1~~ If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

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

~~§ 8.6~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document G203™-2022, BIM Execution Plan, AIA Document E202-2022 BIM Exhibit

for Sharing Models with Project Participants, where models may not be enumerated as a Contract Document and a building information modeling exhibit, if completed, or as otherwise set forth below:

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- .5 Drawings: As bound in the Drawings Set dated 04/30/2025
- .6 Specifications: Divisions 01-33 as indicated in the Table of Contents of the Project Manual dated 04/30/2025.

| Number | Date | Pages |
|-----------------------|-------------------|----------------|
| <u>Addendum No. 1</u> | <u>05/19/2025</u> | <u>5 pages</u> |

☒ AIA Document E204™ 2017, Sustainable Projects E202-2022 BIM Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.) for Sharing Models with Project Participants

☐ The Sustainability Plan:

- 1. Reference Division 00 Documents of the Project Manual dated 04/30/2025:
 - a. Form 96 "Contractor's Bid for Public Work"

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- b. 004113 Supplemental Bid Form
- c. Subcontractor and Products
- d. Performance Bond and Payment Bond (AIA A312)
- e. e-Verify Affidavit

This Agreement entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Agreement, and one to be retained by the Owner.

Variable Information

PAGE 1

AGREEMENT made as of the -Twelfth- day of June- in the year Two Thousand Twenty-five

Franklin Community Schools

7157 W 200 N

Franklin, IN 46131

Ellis Mechanical, Inc.

2929 Bluff Road

Indianapolis, IN 46225

Franklin Middle School Boiler Replacement

625 Grizzly Cub Dr.

Franklin, IN 46131

SAI Project# 2022-024.MSB

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☒ The date of this Agreement.

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☒ ~~By the following date:~~ Substantial Completion shall be accomplished by before winter of 2025.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Thirty-four Thousand and 00/100 Dollars (\$ 734,000.00), subject to additions and deductions as provided in the Contract Documents.

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As indicated in the AIA Document A201.

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~~§ 5.1.7~~ The Owner shall retain amounts from each progress payment as indicated in the AIA Document A201.

☒ Litigation in a court of competent jurisdiction

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David Clendening, Superintendent

Franklin Community Schools

7157 W 200 N

Franklin, IN 46131

Tim Brabender

Ellis Mechanical, Inc.

2929 Bluff Road

Indianapolis, IN 46225

tim@ellismechanicalinc.com

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☒ AIA Document ~~E204™ 2017, Sustainable Projects~~E202-2022 BIM Exhibit, dated as indicated below:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:10:32 EDT on 06/27/2025 under Order No. 20240047854 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

Board of School Trustees, President
(Title)

July 14, 2025
(Dated)

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Franklin Middle School Boiler Replacement
Franklin, IN
SAI Project #2022-024.MSB

THE OWNER:

(Name, legal status and address)

Franklin Community School Corporation
998 Grizzly Cub Drive
Franklin, IN 46131

THE ARCHITECT:

(Name, legal status and address)

Schmidt Associates
415 Massachusetts Avenue
Indianapolis, IN 46204

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ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 The Project Manual

The Project Manual is that portion of the Contract Documents consisting of Contract Requirements, Conditions of the Contract, general requirements for construction, and sample forms.

§ 1.1.10 Approved Equal

"Approved Equal" refers to any materials, systems or installations which, in the opinion of the Architect/Engineer and Owner, are equal in quality, durability, functional performance, strength, appearance, etc., to the specified or

scheduled material, systems or installation and will meet the intent and performance requirements of the Contract Documents, and are approved by the Architect/Engineer prior to bidding in accordance with the Instructions to Bidders.

§ 1.1.11 Furnished By Owner

"Furnished by Owner" refers to equipment delivered FOB to Project site by the Owner. Contractor shall receive, rig, unload, store, uncrate, protect, set in place and connect equipment complete ready for operation. All labor and materials necessary for final connection shall be provided by the Contractor.

§ 1.1.12 Surety

"Surety" shall mean a person, firm or corporation that has executed, as surety, the Contractor's Performance and labor and material payment bonds securing the performance of the Work within the Contract.

§ 1.1.13 Definitions and Industry Standards

§ 1.1.13.1 Definitions.

§ 1.1.13.1.1 General: Basic Contract definitions are included in the Conditions of the Contract.

§ 1.1.13.1.2 "Reviewed": When used to convey Architect's action on Contractor's submittals, applications, and requests, "reviewed" is limited to Architect's duties and responsibilities as stated in the Conditions of the Contract.

§ 1.1.13.1.3 "Directed": A command or instruction by Architect. Other terms including "requested," "authorized," "selected," "required," and "permitted" have the same meaning as "directed."

§ 1.1.13.1.4 "Indicated": Requirements expressed by graphic representations or in written form on Drawings, in Specifications, and in other Contract Documents. Other terms including "shown," "noted," "scheduled," and "specified" have the same meaning as "indicated."

§ 1.1.13.1.5 "Regulations": Laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, and rules, conventions, and agreements within the construction industry that control performance of the Work.

§ 1.1.13.1.6 "Furnish": Supply and deliver to Project site, ready for unloading, unpacking, assembly, installation, and similar operations.

§ 1.1.13.1.7 "Install": Operations at Project site including unloading, temporarily storing, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

§ 1.1.13.1.8 "Provide": Furnish and install, complete and ready for the intended use.

§ 1.1.13.1.9 "Project Site": Space available for performing construction activities. The extent of Project site is shown on Drawings and may or may not be identical with the description of the land on which Project is to be built.

§ 1.1.13.2 Standards.

§ 1.1.13.2.1 Applicability of Standards: Unless the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.

§ 1.1.13.2.2 Publication Dates: Comply with standards in effect as of date of the Contract Documents unless otherwise indicated.

§ 1.1.13.2.3 Copies of Standards: Each entity engaged in construction on Project should be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents. Where copies of standards are needed to perform a required construction activity, obtain copies directly from publication source.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the case of an inconsistency between Drawings and Specifications and within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's/Engineer's interpretation.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document G203™–2022, BIM Execution Plan, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document G203™–2022, BIM Execution Plan, AIA Document E202–2022 BIM Exhibit for Sharing Models with Project Participants, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.1.1 National Pollution Discharge Elimination System (NPDES): the Owner will provide the approved package to the Contractor for the Contractor to comply with 327-Indiana Administrative Code-15-5 (Rule 5). The Contractor shall be responsible for submitting completed documents to the Indiana Department of Environmental Management (IDEM) and for obtaining the required permit.

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3.4, and shall at once report to the Architect errors,

inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

§ 3.2.3 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once. The Contractor shall be responsible for all costs including compensation for the Architect resulting from or arising out of the Contractor's failure to take proper field measurements or to verify existing field conditions.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 The Contractor shall not scale dimensions from Drawings unless expressly directed to do so by the Architect/Engineer.

§ 3.2.6 Where there is a conflict or inconsistency in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated on providing the better quality of Work and the larger quantity required.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures; provided, however, in no event shall Contractor proceed in any manner that would violate applicable laws or regulations including but not limited to OSHA and IOSHA regulations.

§ 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.

§ 3.3.2.1 E-Verify Certification. Pursuant to Indiana Code 22-5-1.7, Contractor providing services to Owner certifies that it has enrolled in and is verifying the work eligibility status of all newly hired employees through the E-Verify program for the duration of this and future contracts for services with Owner, unless and until the E-Verify program no longer exists. Contractor affirms that it does not knowingly employ or retain in its employ unauthorized aliens, which includes persons whose immigration status makes them ineligible to work for Contractor. Contractor requires all of its Subcontractors, before performing services under this Contract, in any amount, to provide to Contractor a Certification that, at the time of Certification, (a) Subcontractor does not knowingly employ or contract with unauthorized aliens, meaning persons whose immigration status makes them ineligible to work for Subcontractor, and (b) Subcontractor has enrolled in and is participating in the E-Verify program. Contractor certifies that it will keep on file these Subcontractor Certifications referenced for the duration of contract with Subcontractor to provide services under this or future contract with Owner. This provision does not apply to subcontractors who are self-

employed and do not employ employees or to contractor who is not providing services to Owner.

§ 3.3.2.2 Contractor Not Suspended or Debarred: By signing this Agreement, Contractor certifies that Contractor, its principals or sub-recipients are not suspended or debarred by Federal Government, nor is known suspension or debarment procedure pending. Contractor agrees to notify the Owner in writing of suspension or debarment, or potential suspension or debarment proceeding. Failure to report suspension or debarment, or potential suspension or debarment will be sufficient cause to terminate this Agreement and report such termination to Federal authorities. Contractor representative certifies that he/she has authorization to make such certification and to bind Contractor to all representations herein.

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

§ 3.5.1 In addition to any warranties implied by law or any special warranties with respect to particular equipment or systems, the Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.5.3 The Contractor shall guarantee that all Work executed under the respective sections will be free of defects of materials and Workmanship for a period of one year from the date of Substantial Completion of the Work. The Contractor shall, at the Contractor's own expense, repair and replace all such defective Work, and all other Work damaged thereby, which becomes defective during the term of the guarantee/warranty. Where guarantees are required, Contractor shall secure warranties from subcontractors, manufacturers and/or suppliers addressed to and in favor of the Owner and deliver copies of the same to the Architect/Engineer upon completion of the Work. Delivery of said guarantees shall not relieve Contractor from any obligations assumed under any other provisions of the Contract.

§ 3.6 Taxes

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

§ 3.6.2 The Contractor shall include in the proposal the cost of any and all state and federal taxes applying to the operation of performing the Contract.

§ 3.6.3 Only as permitted under state law, materials supplied for permanent installation in this Project are exempt from state sales taxes. The Owner will provide the Contractor with the Owner's tax exemption certificate number.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.7.1.1 National Pollution Discharge Elimination System (NPDES): Contractor shall be required to be the Owner's authorized agent for 327-IAC-15-5 (Rule 5) while construction is being done at the Project site. The Contractor shall advertise a public notice of construction activity in accordance with the requirements of Rule 5 in the predominant newspaper in the county of the Project. Evidence of advertisement, permit application and a fee of \$100.00 will be required to be submitted to IDEM before commencement of construction.

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated Allowance amounts shall be stated in Division 01 section "Allowances" in accordance with the type of Allowance specified; 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 and Other Key Personnel

§ 3.9.1 The Contractor shall employ a competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's project manager shall be the person who has responsibility for the prosecution of the Work and who has the authority to act on behalf of the Contractor in all matters for the coordination, direction and technical administration of the Work.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.9.4 The Contractor shall provide a competent and adequate staff, including but not limited to the project manager and superintendent for the timely and proper administration of the Work. If the Owner determines that the continued participation of any member of the Contractor's staff is not in the best interest of the Project, the Owner may require the Contractor to replace the unsatisfactory staff member. In addition, the Contractor shall not change key members of its staff including but not limited to its project manager and superintendent without the prior written consent of the Owner which consent shall not be unreasonably withheld, so long as such key person remains satisfactory to and employed by the Contractor.

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Contractor shall diligently monitor the progress of the Work, and update the construction schedule on a prompt and periodic basis to reasonably reflect the actual progress of the Work.

§ 3.10.4 Contractor shall notify Owner in writing within seven (7) days of any update to the construction schedule that reflects a delay or imminent delay to the Substantial Completion Date. Notwithstanding the foregoing, Owner and Contractor hereby acknowledge and agree that the only means of modifying the Contract Time is by a duly executed written Change Order, signed by the Owner and Contractor pursuant to the provisions of the Contract Documents.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the

absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

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

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

§ 3.13 Use of Site

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

§ 3.13.2 Only materials and equipment that are to be used directly in the Work and in the immediate future shall be brought to and stored on the Project site by the Contractor. Equipment no longer required for the Work shall be promptly removed from the Project. Contractor shall be solely responsible for the protection of materials, tools, and equipment stored at the Project site from weather, theft, damage, and all other adversity.

§ 3.13.3 The Contractor shall keep the Project site, all roads, sidewalks, parking areas, and thoroughfares on and adjacent to the Project free from obstructions which might present a hazard, nuisance, or interference with vehicular or pedestrian traffic. When construction operations necessitate the closing of traffic lanes or sidewalks, the Contractor shall be responsible for arranging such closing in advance with the authorities having jurisdiction, the Owner and any adjacent property owners. The Contractor shall provide adequate barricades, signs, flagmen, traffic control personnel, and other devices for traffic guides and public safety. The Work shall be performed to the fullest extent reasonably possible in such a manner that areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.4 The Contractor shall not permit any of its or its Subcontractors' employees to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner or the Owner's authorized representative. Without limitation by any other provision of the Contract Documents, the Contractor shall comply with any and all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site, as may be amended from time to time.

§ 3.13.5 The Contractor recognizes that the school buildings shall remain in operation during performance of the Work. Accordingly, the Contractor shall cooperate with the Owner in scheduling and performing the Work to avoid unnecessary or unreasonable conflict, delay in or interference with the classes being held at the school buildings and the Owner's other ongoing operations at or adjacent to the Project. It is critical that such classroom instruction and Owner's other operations not suffer any significant interference, including, without limitation, any interruption in utilities or unreasonable noise, dust, odor, vibration or hazardous condition. The Contractor shall perform the Work and limit its use of the Project site in such manner as to minimize any interference with Owner's classroom

instructions, occupancy and operations in the school buildings consistent with the Contract Documents and applicable building rules and regulations. Without limiting the generality of the foregoing, at no additional cost to Owner, the Contractor shall provide and apply continuous internal and external dust control, as required, to prevent the spread of dust and to avoid the creation of a nuisance at the Project site or in the surrounding areas as a result of construction activities. All ingress/egress from the Project site shall be maintained in a dry condition, and any mud tracked onto areas of the Project or any building or property of third persons shall be immediately removed and the affected area cleaned. The Contractor, the Owner and its representatives, and the Architect shall regularly meet and communicate in order to coordinate the performance of the Work activity with the Owner's classroom instruction and other ongoing operations at the Project. The Owner shall have the right in writing to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the ongoing operation of the Owner's premises. The Contractor shall, upon the Owner's written request, reschedule any portion of the Work affecting operation of the premises to hours when the premises are not in operation or as may be requested by the Owner. The Contractor may seek an extension of time as permitted by the Contract Documents for any such postponement or rescheduling of any performance of the Work and an equitable adjustment in the Contract Sum but only if (1) the performance of the Work was properly scheduled and coordinated by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling or postponement is required for the sole convenience of the Owner, and (3) the Contractor complies with the claim and notice requirements of Article 15.

§ 3.13.6 The Contractor shall be responsible for the Project remaining secure at all times. All of the workers of Contractor and its subcontractors, whatever tier, at the Project site shall be clearly identified by company badges, t-shirts or other acceptable identification.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Patching (whether occasioned by existing Work removal or by ill-timed and damaged new Work) shall mean the restoration of a surface or item to its original condition to match the existing unless otherwise indicated, noted, detailed, or specified. Cutting and patching shall be done by the proper trades or crafts necessary for the material involved, but the cost of the same shall be borne by the Contractor requiring the cutting and patching. When patching involves painting, special coating, vinyl fabric or other applied finish, the entire surface affected (i.e., wall or ceiling) shall be refinished as a part of this requirement unless complete refinishing of the entire space is scheduled or specified elsewhere.

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer

or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. If Work is being executed at locations other than the Project site, the Contractor shall notify the Architect / Engineer where and when such Work will occur in order that the Architect / Engineer may conduct visits prior to its delivery to the Project site.

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

§ 4.2.11 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.

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

§ 4.2.13 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.

§ 4.2.15 Contractor shall be responsible for and shall promptly reimburse the Owner for any and all additional Architect costs incurred by the Owner that are caused in whole or in part by the Contractor including but not limited to the following: (1) the Architect having to review the Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect; (2) the Architect responding to the Contractor's request for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings or prior Project correspondence or documentation; (3) the Architect providing construction phase services 60 days after substantial completion of the Work or the Substantial Completion Date, whichever date is earlier; (4) the Architect providing more than two reviews of each shop drawing, product data item, sample or other similar submittal of the Contractor; (5) the Architect providing more than two inspections of any portion of the Work to determine whether the Work is substantially complete; and (6) the Architect providing more than two inspections of any portion of the Work to determine final completion of the Work. The invoices submitted by the Architect for such additional services, when approved by the Owner, shall be used as the basis for adjusting the Contract Sum by a deductive Change Order.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not

prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

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 and Contractor. A Construction Change Directive requires agreement by the Owner 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, acting as the Owner's agent.

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation as stipulated in 7.3.12;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in accordance with 7.3.11. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs for the Contractor's Project Managers and Superintendents assigned to the Project, including any costs associated with the evaluation and administration of the change, are part of the overhead allowance enumerated in 7.3.11.

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

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

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

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

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

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

§ 7.3.11 The allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 for the Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.
- .2 for the Contractor, for Work performed by the Contractor's subcontractor, 5 percent of the amount due the subcontractor.
- .3 for each subcontractor or sub-subcontractor involved, for Work performed by that subcontractor's or sub-subcontractor's own forces, 10 percent of the cost.
- .4 for each subcontractor, for Work performed by the subcontractors, 5 percent of the amount due the sub-subcontractor.
- .5 cost to which overhead and profit is to be applied shall be determined in accordance with subparagraph 7.3.7.

§ 7.3.12 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed in 7.3.4 and 7.3.11. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving more than \$1,000.00 be approved without such itemization.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.2.4 Completion shall be understood to be Substantial Completion for the Owner's beneficial occupancy, with only minor "punch list" items yet to be completed and items such as balancing of heating system, exterior paving or landscaping etc., which cannot be completed due to climatic conditions.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in

the Work; (3) by fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) except labor disputes, by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.1.1 The Contractor shall not be allowed to claim weather delay days for the number of days which the U.S. Weather Bureau reports as the average number of days per month of inclement weather for the nearest reporting station to Franklin, IN (latest available information.) The Contractor shall take this number of days and the Project Schedule into account when preparing its bid proposal. Historical data for all areas may be obtained from:

U.S. Department of Commerce
National Climatic Center
Federal Building
Asheville, NC 28801
Phone (704) 259-0682
<http://www.ncdc.noaa.gov/>

§ 8.3.1.2 Inclement weather shall be defined as rain, snow, sleet, hail or other forms of precipitation that prohibit/halt/or otherwise inhibit the ability of the Contractor to make meaningful progress. If the Work has progressed to the point that inclement weather does not affect the progress of the Contractor, no delay can be claimed. No delay is allowed for the effect of inclement weather. The Contractor shall make provisions to overcome the effect of inclement weather (i.e. mud, snow, etc.).

§ 8.3.1.3 The Contractor shall include in its bid a sufficient amount of money to cover the required manpower, equipment, protection, etc. to complete its Work in accordance with the Project Guideline Schedule, accounting for inclement weather. It is the Contractor's obligation to provide a copy of the "National Climatic Center" report with any weather delay filed. This includes the current information as well as the monthly averages available at the time of bidding.

§ 8.3.1.4 The Contractor nor any subcontractor shall be due any additional compensation for an extension of time granted the Contractor, or granted to another Prime Contractor for a weather delay extension. The Contractor may receive additional days only.

§ 8.3.2 Unless the Contractor shall, within seven (7) days from the commencement of any possible excusable delay or within seven (7) days from the time delay, notify the Owner and the Architect/Engineer in writing of all facts then available to the Contractor relative to the nature and extent of the delay, and its anticipated effect, if any upon the time for Substantial Completion of the Work as hereinbefore described, and shall also request that a determination be made as to whether or not the delay is an excusable delay so as to extend the number of calendar days for completion of the Work, the act or occurrence in question shall not thereafter be an excusable delay for any purpose except upon the written consent of the Architect/Engineer.

§ 8.3.3 The Architect/Engineer will promptly acknowledge the Contractor's request for extension of time, but the Architect/Engineer need not make a determination concerning the same until the nature and extent of the delay and its related impact upon the Contract time for completion are determined.

§ 8.3.4 The Contractor shall furnish sufficient labor forces, materials, equipment, enclosures, and anything else reasonably required for the Work and protection thereof and shall work such hours including additional shifts, overtime, and weekends as may be necessary to ensure the prosecution of the Work in order to meet the Substantial Completion Date and in accordance with the current approved construction schedule. Should the Contractor fall behind the current approved construction schedule or is in jeopardy of missing the Substantial Completion Date to the extent due to Contractor's fault, the Contractor shall take all such steps as may be reasonably necessary to improve his progress in order to meet the Substantial Completion Date and current approved construction schedule including but not limited to increasing the number of laborers, shifts, working overtime, and/or working weekends, all without an increase in the Contract Sum.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Applications for Payment shall be submitted to the Architect/Engineer each month on original AIA Forms G702 and G703. The final application shall also be accompanied by the Approval of Surety. Copies of the standard forms are on file and may be examined at the office of the Owner. Copies of all required permits shall accompany the first application for payment. All applications shall be notarized and signed ("wet signatures").

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

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

§ 9.3.1.3 Until the Work is 50% complete, the Owner will retain 10% of the amount due the Contractor on account of progress payments. At the time the Work is 50% completed and, at the request of the Contractor, the Architect/Engineer (with consent of Surety) may recommend the reduction of retainage on any remaining partial payments to 0% provided that the manner of completion of the Work and its timely progress are satisfactory to the Architect/Engineer and the Owner.

§ 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. Payments for materials or equipment stored off the site shall not be approved.

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

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which previous certificates were issued and payment received and further waives all rights of lien for the total amount previously paid, and further represents that no person or party has any right to a lien on account of Work performed or material furnished.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to submit the Construction Schedule in accordance with Division 01 Section "Construction Progress Documentation" of this Manual or failure to submit periodic schedule reports prior to each application for payment.

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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.

§ 9.8.1.1 Project Closeout includes those activities leading to Substantial Completion and Final Completion of the Work. Project Closeout activities and requirements are specified in Division 01 Section "Closeout Procedures" of this Manual. To administer and conduct Project Closeout, the Contractor shall indicate a designated value as specified in Division 01 Section "Payment Procedures," of this Manual.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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.

§ 9.8.4.1 If, upon the Architect's/Engineer's completion of the initial inspection and the second inspection, as described in paragraph 9.8.3, there remains incomplete or unsatisfactory Work, the Contractor will be back-charged for time to satisfactorily complete the Work accrued by the Owner and Architect/Engineer, including the Architect's/Engineer's consultants. Charges will be at each of the party's current prevailing rate and commence following the second inspection. The back charges will be deducted from the Project Closeout cost indicated on the Contractor's Schedule of Values.

§ 9.8.4.2 The Certificate of Substantial Completion shall establish a thirty (30) day period after the date of substantial completion within which the Contractor will have to complete all items on the accompanying punch list to the Certificate of Substantial Completion. If Contractor does not complete the punch list within the time period specified herein, then Contractor shall reimburse Owner for all architectural, consultant, attorneys' and all other fees that Owner incurs as a result of Contractor's delay.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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. Owner shall, however, have the right to continue to withhold two hundred percent (200%) of the value of defective or uncompleted items ("Punch List Items"). The Contractor shall complete the Punch List Items within thirty days of Substantial Completion of the Work, unless otherwise specifically agreed to by the Owner in writing. The amounts so retained shall be paid on a monthly pro rata basis as the Punch List Items are satisfactorily corrected and/or completed. Owner shall also have the right to withhold payment in the event Contractor has not fully paid its Subcontractors, material suppliers, laborers or others furnishing services.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security,

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maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of

claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- .4 Any such property, including areas used for temporary field offices, storage sheds and material storage and assembly, shall be restored to its original condition, unless otherwise specified, without cost to the Owner.

§ 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. In the event of conflict between these Construction Documents and requirements of any Local, State or governing Federal Authority or laws, the most stringent requirement shall govern the Work.

§ 10.2.2.1 The Contractor represents that it is knowledgeable of the Occupational Safety And Health Act (OSHA) and promulgated regulations applicable to the performance of Work. The Contractor acknowledges and accepts affirmative duty of enforcing these regulations, and the Contractor shall promptly advise the Owner of investigations by the Federal safety and health inspectors at the Contractor's, subcontractor's or the sub-subcontractor's Work places or at the project site. The Contractor shall advise the Owner of the outcome(s) of all such investigations and/or inspections. The Contractor assumes full and exclusive responsibility and agrees to indemnify and hold the Owner harmless against any and all consequences arising from the Contractor's violation of regulations governing the Work of this Project, including payment of any fines, penalties and/or interest assessed in connection therewith, court costs and all attorney fees that are incurred by the Owner related thereto.

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 The Contractor acknowledges that the safety of the Owner's building occupants and visitors is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of the Owner's building occupants or visitors. The Contractor shall take all necessary and appropriate steps to preclude access to the construction site by the Owner's building occupants and visitors. Contractor shall be responsible for all safety precautions and requirements related to or arising out of its Work. Any fines generated as a result of Contractor's non-compliance with a local, state, or federal safety regulation shall be the responsibility of Contractor. Any fine issued to the Owner as a result of Contractor's (including its Subcontractors, equipment lessors, suppliers, Sub-subcontractors, and any other person or entity directly or indirectly acting for the Contractor) non-compliance shall be the responsibility of the Contractor and not the Owner.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a 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 the material or substance or who are to perform the task of removal or safe containment of the 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 and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

§ 10.3.6 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 reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

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

§ 11.1.5 Refer to AIA Document A101™–2017, Exhibit A, Insurance and Bonds.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner does not insure any equipment, scaffolding, towers, staging, forms or tools owned or rented by the Contractor; or any tools owned by mechanics, outbuilding, shops, or housing facilities.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance

that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.2.4 Refer to AIA Document A101™–2017, Exhibit A, Insurance and Bonds.

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. When a change in the Work is contemplated which may affect the Contract sum or duration of the Work, the Architect/Engineer may issue a Proposal Request, AIA Form G709, the Contractor shall promptly, but in no case longer than ten (10) working days, issue a reply or change quotation, stipulating the change in cost and/or duration as a result of the proposed change. The issuance of a Proposal Request does not, in any way, authorize commencement of the Work therein described. Should, after review and consultation with the Owner, the Architect/Engineer finds the Change Quotation by the Contractor to be acceptable, the Architect/Engineer will issue a written Change Order to the Contractor within 30 days of receipt of the Change Quotation.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the

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requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 Contractor and all Subcontractors are responsible to comply with Indiana Code as it pertains to public works projects. The following are notable requirements set forth in IC 5-16-13, in effect as of July 1, 2015, but are not inclusive of all requirements.

- .1 Contractor shall self-perform Work of at least 15 percent of total Contract price.
- .2 Contractor and all Subcontractors, regardless of tier, shall maintain General Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- .3 Contractor and all Subcontractors, regardless of tier, shall not pay cash to its employees for Work performed on this public works Project.
- .4 Contractor and all Subcontractors, regardless of tier, shall comply with federal Fair Labor Standards Act of 1938.
- .5 Contractor and all Subcontractors, regardless of tier, shall be in compliance with workers compensation requirements of Indiana Code 22-3-5-1 and Indiana Code 22-3-7-34 and commits worker's compensation fraud if such Contractor or Subcontractor falsely classifies an employee as an independent contractor, sole proprietor, owner, partner, officer, or member of a limited liability company.
- .6 Contractor and all Subcontractor, regardless of tier, shall be in compliance with unemployment compensation system requirements of Indiana Code 22-4-1 through 22-4-39-5.
- .7 Contractor and all Subcontractors, regardless of tier, shall be in compliance with requirements for drug testing of its employees set forth in Indiana Code 4-13-18-1 through 4-13-18-7.

§ 13.1.2 Following provisions shall be in effect for Contracts awarded after December 31, 2016.

- .1 Contractor and all Subcontractors, regardless of tier, that are performing the constructing, altering, demolishing, or renovating of a public building or other structure must be qualified by the Indiana Department of Administration, and those contractors and subcontractors that are constructing, altering, or repairing highways, streets, or alleys must be qualified by INDOT.
 - .1 Suppliers of material are not required to be qualified by IDOA prior to doing work on public works projects. A "Supplier" is defined as "any person supplying materials, but no on site labor, to a Contractor or Subcontractor. IC 4-13.6-1-20.
 - .2 Contractors and Subcontractors, regardless of tier, performing work for local governmental entities awarded under Ind. Code 36-1-12 and whose contracts are less than \$300, 000 are not required to have been qualified by IDOA or INDOT.
- .2 For public works by local governmental entities under Ind. Code 36-1-12, Contractor and its Subcontractors shall comply with requirements for drug testing of its employees set forth in Ind. Code 4-13-18 if estimated cost of public works Contract is at least \$150,000.
- .3 Contractor and all Subcontractors, regardless of tier, shall preserve its payroll and related records for three (3) years after completion of the project work and such records shall be open to inspection by the

Indiana Department of Workforce Development.

- 4 If Contractor or Subcontractor, regardless of tier, employs 10 or more employees, then such Contractor/Subcontractor shall provide access to a training program applicable to tasks to be performed in normal course of employee's employment. Contractor or Subcontractor may comply with this training requirement through one of following: (i) an apprenticeship program; (ii) a program offered by Ivy Tech Community College of Indiana or Vincennes University; (iii) a program established by or for Contractor Subcontractor; (iv) a program offered by an entity sponsored by U. S. Department of Labor, Bureau of Apprenticeship and Training; (v) a program that results in award of an industry recognized portable certification; (vi) a program approved by Federal Highway Administration; or (vii) a program approved by INDOT.
- 5 If Contractor or first tier Subcontractor employs more than 50 journeymen, such Contractor/first tier Subcontractor shall participate in an apprenticeship or training program that meets standards established by or has been approved by any of following: U.S. Department of Labor, Bureau of Apprenticeship and Training; Indiana Department of Labor; Federal Highway Administration; or INDOT.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that

sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall not be final and binding on the parties. Either party may seek binding dispute resolution through litigation within the time allowed by the statute of limitations applicable to the Claim.

§ 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, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 Prior to engaging in litigation as binding dispute resolution, the parties shall endeavor to resolve their Claims informally, provided, however, that informal resolution of a Claim is not a condition precedent to binding dispute resolution through litigation.

§ 15.3.3 Either party may, within the time allowed by the statute of limitations applicable to the Claim, seek binding dispute resolution through litigation regardless of whether informal dispute resolution has occurred pursuant to Section 15.3.2.

§ 15.3.4

§ 15.4 Consolidation or Joinder

§ 15.4.1 Either party may consolidate a mediation conducted under this Agreement with any other mediation to which it is a party provided that (1) the mediation agreement governing the other mediation permits consolidation, (2) the mediations to be consolidated substantially involve common questions of law or fact, and (3) the mediations employ materially similar procedural rules and methods for selecting mediator(s).

§ 15.4.2 Either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in mediation, provided that the party sought to be joined consents in writing to such joinder. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of any claim, dispute or other matter in question not described in the written consent.

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

ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 16.1 If any part of the Contract Documents are later found to be contrary to, prohibited by or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of the Contract Documents shall not be invalidated and shall be given full force and effect insofar as possible.

§ 16.2 Notwithstanding anything herein to the contrary, pursuant to Ind. Code 36-1-12-15 and Ind. Code 5-16-6-1, the Contractor agrees:

1. That in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor nor its Subcontractors, nor any person acting on behalf of the Contractor or its Subcontractors, shall, by reason of race, religion, color, sex, national origin, ancestry or disability, discriminate against any person who is qualified and available to perform the work to which the employment relates; and
2. that neither the Contractor nor its Subcontractors, nor any person acting on behalf of the Contractor or its Subcontractors, shall discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, religion, color, sex, national origin, ancestry or disability; and
3. that there may be deducted from the amount payable to the Contractor by the Owner, under this Contract, a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and
4. that this Contract may be canceled or terminated by the Owner and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of this contract provision.

§ 16.3 In accordance with Ind. Code § 36-1-12-20, IOSHA regulations 29 C.F.R. 1926, Subpart P, for trench safety systems shall be incorporated into this Agreement and the cost for any trench safety systems shall be paid for (1) as a separate pay item; or (2) in the pay item of the principal work with which the safety systems are associated.

§ 16.4 Contractor shall, to the extent applicable, comply with the Owner's criminal history background and child protection index check policy(ies) and comply with applicable laws regarding such criminal history background and child protection index check policies.

§ 16.5 STEEL PRODUCTS

§ 16.5.1 In accordance with Indiana Code § 5-16-8, if any steel products are to be used or supplied in the performance of Contractor's Work, only steel products as defined in Section 16.5.2 shall be used or supplied in the performance of this Agreement or any of the subcontracts unless the head of the public agency determines, in writing, that the cost of steel products is deemed to be unreasonable.

§ 16.5.2 As defined in Indiana Code § 5-16-8-1, "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly process, or processed by a combination of two (2) or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

Additions and Deletions Report for AIA® Document A201® – 2017

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Changes to original AIA text

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Schmidt Associates
415 Massachusetts Avenue
Indianapolis, IN 46204

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§ 1.1.9 The Project Manual

The Project Manual is that portion of the Contract Documents consisting of Contract Requirements, Conditions of the Contract, general requirements for construction, and sample forms.

§ 1.1.10 Approved Equal

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"Approved Equal" refers to any materials, systems or installations which, in the opinion of the Architect/Engineer and Owner, are equal in quality, durability, functional performance, strength, appearance, etc., to the specified or scheduled material, systems or installation and will meet the intent and performance requirements of the Contract Documents, and are approved by the Architect/Engineer prior to bidding in accordance with the Instructions to Bidders.

§ 1.1.11 Furnished By Owner

"Furnished by Owner" refers to equipment delivered FOB to Project site by the Owner. Contractor shall receive, rig, unload, store, uncrate, protect, set in place and connect equipment complete ready for operation. All labor and materials necessary for final connection shall be provided by the Contractor.

§ 1.1.12 Surety

"Surety" shall mean a person, firm or corporation that has executed, as surety, the Contractor's Performance and labor and material payment bonds securing the performance of the Work within the Contract.

§ 1.1.13 Definitions and Industry Standards

§ 1.1.13.1 Definitions.

§ 1.1.13.1.1 General: Basic Contract definitions are included in the Conditions of the Contract.

§ 1.1.13.1.2 "Reviewed": When used to convey Architect's action on Contractor's submittals, applications, and requests, "reviewed" is limited to Architect's duties and responsibilities as stated in the Conditions of the Contract.

§ 1.1.13.1.3 "Directed": A command or instruction by Architect. Other terms including "requested," "authorized," "selected," "required," and "permitted" have the same meaning as "directed."

§ 1.1.13.1.4 "Indicated": Requirements expressed by graphic representations or in written form on Drawings, in Specifications, and in other Contract Documents. Other terms including "shown," "noted," "scheduled," and "specified" have the same meaning as "indicated."

§ 1.1.13.1.5 "Regulations": Laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, and rules, conventions, and agreements within the construction industry that control performance of the Work.

§ 1.1.13.1.6 "Furnish": Supply and deliver to Project site, ready for unloading, unpacking, assembly, installation, and similar operations.

§ 1.1.13.1.7 "Install": Operations at Project site including unloading, temporarily storing, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

§ 1.1.13.1.8 "Provide": Furnish and install, complete and ready for the intended use.

§ 1.1.13.1.9 "Project Site": Space available for performing construction activities. The extent of Project site is shown on Drawings and may or may not be identical with the description of the land on which Project is to be built.

§ 1.1.13.2 Standards.

§ 1.1.13.2.1 Applicability of Standards: Unless the Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents to the extent referenced. Such standards are made a part of the Contract Documents by reference.

§ 1.1.13.2.2 Publication Dates: Comply with standards in effect as of date of the Contract Documents unless otherwise indicated.

§ 1.1.13.2.3 Copies of Standards: Each entity engaged in construction on Project should be familiar with industry standards applicable to its construction activity. Copies of applicable standards are not bound with the Contract Documents. Where copies of standards are needed to perform a required construction activity, obtain copies directly from publication source.

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the case of an inconsistency between Drawings and Specifications and within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's/Engineer's interpretation.

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The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document G203™-2022, BIM Execution Plan, to establish the protocols for the development, use, transmission, and exchange of digital data.

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document G203™-2022, BIM Execution Plan, AIA Document E202-2022 BIM Exhibit for Sharing Models with Project Participants, shall be at the using or relying party's sole risk and without liability to the other

party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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§ 2.3.1.1 National Pollution Discharge Elimination System (NPDES): the Owner will provide the approved package to the Contractor for the Contractor to comply with 327-Indiana Administrative Code-15-5 (Rule 5). The Contractor shall be responsible for submitting completed documents to the Indiana Department of Environmental Management (IDEM) and for obtaining the required permit.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

~~§ 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 with each other and with information furnished by the Owner pursuant to Section 2.3.4, and 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 at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.~~

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~~§ 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. shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once. The Contractor shall be responsible for all costs including compensation for the Architect resulting from or arising out of the Contractor's failure to take proper field measurements or to verify existing field conditions.~~

§ 3.2.5 The Contractor shall not scale dimensions from Drawings unless expressly directed to do so by the Architect/Engineer.

§ 3.2.6 Where there is a conflict or inconsistency in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated on providing the better quality of Work and the larger quantity required.

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User Notes:

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures; provided, however, in no event shall Contractor proceed in any manner that would violate applicable laws or regulations including but not limited to OSHA and IOSHA regulations.

§ 3.3.2.1 E-Verify Certification. Pursuant to Indiana Code 22-5-1.7, Contractor providing services to Owner certifies that it has enrolled in and is verifying the work eligibility status of all newly hired employees through the E-Verify program for the duration of this and future contracts for services with Owner, unless and until the E-Verify program no longer exists. Contractor affirms that it does not knowingly employ or retain in its employ unauthorized aliens, which includes persons whose immigration status makes them ineligible to work for Contractor. Contractor requires all of its Subcontractors, before performing services under this Contract, in any amount, to provide to Contractor a Certification that, at the time of Certification, (a) Subcontractor does not knowingly employ or contract with unauthorized aliens, meaning persons whose immigration status makes them ineligible to work for Subcontractor, and (b) Subcontractor has enrolled in and is participating in the E-Verify program. Contractor certifies that it will keep on file these Subcontractor Certifications referenced for the duration of contract with Subcontractor to provide services under this or future contract with Owner. This provision does not apply to subcontractors who are self-employed and do not employ employees or to contractor who is not providing services to Owner.

§ 3.3.2.2 Contractor Not Suspended or Debarred: By signing this Agreement, Contractor certifies that Contractor, its principals or sub-recipients are not suspended or debarred by Federal Government, nor is known suspension or debarment procedure pending. Contractor agrees to notify the Owner in writing of suspension or debarment, or potential suspension or debarment proceeding. Failure to report suspension or debarment, or potential suspension or debarment will be sufficient cause to terminate this Agreement and report such termination to Federal authorities. Contractor representative certifies that he/she has authorization to make such certification and to bind Contractor to all representations herein.

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§ 3.5.1 ~~The~~In addition to any warranties implied by law or any special warranties with respect to particular equipment or systems, the Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 Taxes

§ 3.5.3 The Contractor shall guarantee that all Work executed under the respective sections will be free of defects of materials and Workmanship for a period of one year from the date of Substantial Completion of the Work. The Contractor shall, at the Contractor's own expense, repair and replace all such defective Work, and all other Work damaged thereby, which becomes defective during the term of the guarantee/warranty. Where guarantees are required, Contractor shall secure warranties from subcontractors, manufacturers and/or suppliers addressed to and in favor of the Owner and deliver copies of the same to the Architect/Engineer upon completion of the Work. Delivery of said guarantees shall not relieve Contractor from any obligations assumed under any other provisions of the Contract.

§ 3.6 Taxes

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

§ 3.6.2 The Contractor shall include in the proposal the cost of any and all state and federal taxes applying to the operation of performing the Contract.

§ 3.6.3 Only as permitted under state law, materials supplied for permanent installation in this Project are exempt from state sales taxes. The Owner will provide the Contractor with the Owner's tax exemption certificate number.

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§ 3.7.1.1 National Pollution Discharge Elimination System (NPDES): Contractor shall be required to be the Owner's authorized agent for 327-IAC-15-5 (Rule 5) while construction is being done at the Project site. The Contractor shall advertise a public notice of construction activity in accordance with the requirements of Rule 5 in the predominant newspaper in the county of the Project. Evidence of advertisement, permit application and a fee of \$100.00 will be required to be submitted to IDEM before commencement of construction.

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

- 2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated ~~allowance~~ Allowance amounts shall be ~~included~~ stated in the Contract Sum but not in the allowances Division 01 section "Allowances" in accordance with the type of Allowance specified; and

§ 3.9 Superintendent and Other Key Personnel

§ 3.9.1 The Contractor shall employ a competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's project manager shall be the person who has responsibility for the prosecution of the Work and who has the authority to act on behalf of the Contractor in all matters for the coordination, direction and technical administration of the Work.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.4 The Contractor shall provide a competent and adequate staff, including but not limited to the project manager and superintendent for the timely and proper administration of the Work. If the Owner determines that the continued participation of any member of the Contractor's staff is not in the best interest of the Project, the Owner may require

the Contractor to replace the unsatisfactory staff member. In addition, the Contractor shall not change key members of its staff including but not limited to its project manager and superintendent without the prior written consent of the Owner which consent shall not be unreasonably withheld, so long as such key person remains satisfactory to and employed by the Contractor.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Contractor shall diligently monitor the progress of the Work, and update the construction schedule on a prompt and periodic basis to reasonably reflect the actual progress of the Work.

§ 3.10.4 Contractor shall notify Owner in writing within seven (7) days of any update to the construction schedule that reflects a delay or imminent delay to the Substantial Completion Date. Notwithstanding the foregoing, Owner and Contractor hereby acknowledge and agree that the only means of modifying the Contract Time is by a duly executed written Change Order, signed by the Owner and Contractor pursuant to the provisions of the Contract Documents.

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

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

§ 3.13.2 Only materials and equipment that are to be used directly in the Work and in the immediate future shall be brought to and stored on the Project site by the Contractor. Equipment no longer required for the Work shall be promptly removed from the Project. Contractor shall be solely responsible for the protection of materials, tools, and equipment stored at the Project site from weather, theft, damage, and all other adversity.

§ 3.13.3 The Contractor shall keep the Project site, all roads, sidewalks, parking areas, and thoroughfares on and adjacent to the Project free from obstructions which might present a hazard, nuisance, or interference with vehicular or pedestrian traffic. When construction operations necessitate the closing of traffic lanes or sidewalks, the Contractor shall be responsible for arranging such closing in advance with the authorities having jurisdiction, the Owner and any adjacent property owners. The Contractor shall provide adequate barricades, signs, flagmen, traffic control personnel, and other devices for traffic guides and public safety. The Work shall be performed to the fullest extent reasonably possible in such a manner that areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.4 The Contractor shall not permit any of its or its Subcontractors' employees to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner or the Owner's authorized representative. Without limitation by any other provision of the Contract Documents, the Contractor shall comply with any and all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site, as may be amended from time to time.

§ 3.13.5 The Contractor recognizes that the school buildings shall remain in operation during performance of the Work. Accordingly, the Contractor shall cooperate with the Owner in scheduling and performing the Work to avoid unnecessary or unreasonable conflict, delay in or interference with the classes being held at the school buildings and the Owner's other ongoing operations at or adjacent to the Project. It is critical that such classroom instruction and Owner's other operations not suffer any significant interference, including, without limitation, any interruption in utilities or unreasonable noise, dust, odor, vibration or hazardous condition. The Contractor shall perform the Work and limit its use of the Project site in such manner as to minimize any interference with Owner's classroom instructions, occupancy and operations in the school buildings consistent with the Contract Documents and applicable building rules and regulations. Without limiting the generality of the foregoing, at no additional cost to Owner, the Contractor shall provide and apply continuous internal and external dust control, as required, to prevent the spread of dust and to avoid the creation of a nuisance at the Project site or in the surrounding areas as a result of construction activities. All ingress/egress from the Project site shall be maintained in a dry condition, and any mud tracked onto areas of the Project or any building or property of third persons shall be immediately removed and the affected area cleaned. The Contractor, the Owner and its representatives, and the Architect shall regularly meet and communicate in order to coordinate the performance of the Work activity with the Owner's classroom instruction

and other ongoing operations at the Project. The Owner shall have the right in writing to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the ongoing operation of the Owner's premises. The Contractor shall, upon the Owner's written request, reschedule any portion of the Work affecting operation of the premises to hours when the premises are not in operation or as may be requested by the Owner. The Contractor may seek an extension of time as permitted by the Contract Documents for any such postponement or rescheduling of any performance of the Work and an equitable adjustment in the Contract Sum but only if (1) the performance of the Work was properly scheduled and coordinated by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling or postponement is required for the sole convenience of the Owner, and (3) the Contractor complies with the claim and notice requirements of Article 15.

§ 3.13.6 The Contractor shall be responsible for the Project remaining secure at all times. All of the workers of Contractor and its subcontractors, whatever tier, at the Project site shall be clearly identified by company badges, t-shirts or other acceptable identification.

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§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Patching (whether occasioned by existing Work removal or by ill-timed and damaged new Work) shall mean the restoration of a surface or item to its original condition to match the existing unless otherwise indicated, noted, detailed, or specified. Cutting and patching shall be done by the proper trades or crafts necessary for the material involved, but the cost of the same shall be borne by the Contractor requiring the cutting and patching. When patching involves painting, special coating, vinyl fabric or other applied finish, the entire surface affected (i.e., wall or ceiling) shall be refinished as a part of this requirement unless complete refinishing of the entire space is scheduled or specified elsewhere.

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

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§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. If Work is being executed at locations other than the Project site, the Contractor shall notify the Architect / Engineer where and when such Work will occur in order that the Architect / Engineer may conduct visits prior to its delivery to the Project site.

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§ 4.2.10 ~~If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

§ 4.2.11

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

§ 4.2.4211 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.

§ 4.2.4312 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.4413 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.

§ 4.2.15 Contractor shall be responsible for and shall promptly reimburse the Owner for any and all additional Architect costs incurred by the Owner that are caused in whole or in part by the Contractor including but not limited to the following: (1) the Architect having to review the Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect; (2) the Architect responding to the Contractor's request for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings or prior Project correspondence or documentation; (3) the Architect providing construction phase services 60 days after substantial completion of the Work or the Substantial Completion Date, whichever date is earlier; (4) the Architect providing more than two reviews of each shop drawing, product data item, sample or other similar submittal of the Contractor; (5) the Architect providing more than two inspections of any portion of the Work to determine whether the Work is substantially complete; and (6) the Architect providing more than two inspections of any portion of the Work to determine final completion of the Work. The invoices submitted by the Architect for such additional services, when approved by the Owner, shall be used as the basis for adjusting the Contract Sum by a deductive Change Order.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, ~~Contractor, and Architect and Contractor.~~ 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, acting as the Owner's agent.

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- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation as stipulated in 7.3.12;

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in ~~the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount accordance with 7.3.11.~~ In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .5 ~~Costs of supervision and field office personnel directly attributable to the change for the Contractor's Project Managers and Superintendents assigned to the Project, including any costs associated with the evaluation and administration of the change, are part of the overhead allowance enumerated in 7.3.11.~~

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§ 7.3.11 The allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 for the Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.
- .2 for the Contractor, for Work performed by the Contractor's subcontractor, 5 percent of the amount due the subcontractor.
- .3 for each subcontractor or sub-subcontractor involved, for Work performed by that subcontractor's or sub-subcontractor's own forces, 10 percent of the cost.
- .4 for each subcontractor, for Work performed by the subcontractors, 5 percent of the amount due the sub-subcontractor.
- .5 cost to which overhead and profit is to be applied shall be determined in accordance with subparagraph 7.3.7.

§ 7.3.12 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed in 7.3.4 and 7.3.11. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving more than \$1,000.00 be approved without such itemization.

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§ 8.2.4 Completion shall be understood to be Substantial Completion for the Owner's beneficial occupancy, with only minor "punch list" items yet to be completed and items such as balancing of heating system, exterior paving or landscaping etc., which cannot be completed due to climatic conditions.

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.1.1 The Contractor shall not be allowed to claim weather delay days for the number of days which the U.S. Weather Bureau reports as the average number of days per month of inclement weather for the nearest reporting station to Franklin, IN (latest available information.) The Contractor shall take this number of days and the Project Schedule into account when preparing its bid proposal. Historical data for all areas may be obtained from:

U.S. Department of Commerce
National Climatic Center
Federal Building
Asheville, NC 28801
Phone (704) 259-0682
<http://www.ncdc.noaa.gov/>

§ 8.3.1.2 Inclement weather shall be defined as rain, snow, sleet, hail or other forms of precipitation that prohibit/halt/or otherwise inhibit the ability of the Contractor to make meaningful progress. If the Work has progressed to the point that inclement weather does not affect the progress of the Contractor, no delay can be claimed. No delay is allowed for the effect of inclement weather. The Contractor shall make provisions to overcome the effect of inclement weather (i.e. mud, snow, etc.).

§ 8.3.1.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents The Contractor shall include in its bid a sufficient amount of money to cover the required

manpower, equipment, protection, etc. to complete its Work in accordance with the Project Guideline Schedule, accounting for inclement weather. It is the Contractor's obligation to provide a copy of the "National Climatic Center" report with any weather delay filed. This includes the current information as well as the monthly averages available at the time of bidding.

§ 8.3.1.4 The Contractor nor any subcontractor shall be due any additional compensation for an extension of time granted the Contractor, or granted to another Prime Contractor for a weather delay extension. The Contractor may receive additional days only.

§ 8.3.2 Unless the Contractor shall, within seven (7) days from the commencement of any possible excusable delay or within seven (7) days from the time delay, notify the Owner and the Architect/Engineer in writing of all facts then available to the Contractor relative to the nature and extent of the delay, and its anticipated effect, if any upon the time for Substantial Completion of the Work as hereinbefore described, and shall also request that a determination be made as to whether or not the delay is an excusable delay so as to extend the number of calendar days for completion of the Work, the act or occurrence in question shall not thereafter be an excusable delay for any purpose except upon the written consent of the Architect/Engineer.

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§ 8.3.3 The Architect/Engineer will promptly acknowledge the Contractor's request for extension of time, but the Architect/Engineer need not make a determination concerning the same until the nature and extent of the delay and its related impact upon the Contract time for completion are determined.

§ 8.3.4 The Contractor shall furnish sufficient labor forces, materials, equipment, enclosures, and anything else reasonably required for the Work and protection thereof and shall work such hours including additional shifts, overtime, and weekends as may be necessary to ensure the prosecution of the Work in order to meet the Substantial Completion Date and in accordance with the current approved construction schedule. Should the Contractor fall behind the current approved construction schedule or is in jeopardy of missing the Substantial Completion Date to the extent due to Contractor's fault, the Contractor shall take all such steps as may be reasonably necessary to improve his progress in order to meet the Substantial Completion Date and current approved construction schedule including but not limited to increasing the number of laborers, shifts, working overtime, and/or working weekends, all without an increase in the Contract Sum.

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Applications for Payment shall be submitted to the Architect/Engineer each month on original AIA Forms G702 and G703. The final application shall also be accompanied by the Approval of Surety. Copies of the standard forms are on file and may be examined at the office of the Owner. Copies of all required permits shall accompany the first application for payment. All applications shall be notarized and signed ("wet signatures").

§ 9.3.1.3 Until the Work is 50% complete, the Owner will retain 10% of the amount due the Contractor on account of progress payments. At the time the Work is 50% completed and, at the request of the Contractor, the Architect/Engineer (with consent of Surety) may recommend the reduction of retainage on any remaining partial payments to 0% provided that the manner of completion of the Work and its timely progress are satisfactory to the Architect/Engineer and the Owner.

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§ 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. Payments for materials or equipment stored off the site shall not be approved.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Partial payments will be made by the Owner only with the following notarized certification attached: the Contractor will hereby certify that all items are paid for which previous certificates were issued and payment received and further waives all rights of lien for the total amount previously paid, and further represents that no person or party has any right to a lien on account of Work performed or material furnished.

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- .8 failure to submit the Construction Schedule in accordance with Division 01 Section "Construction Progress Documentation" of this Manual or failure to submit periodic schedule reports prior to each application for payment.

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§ 9.8.1.1 Project Closeout includes those activities leading to Substantial Completion and Final Completion of the Work. Project Closeout activities and requirements are specified in Division 01 Section "Closeout Procedures" of this Manual. To administer and conduct Project Closeout, the Contractor shall indicate a designated value as specified in Division 01 Section "Payment Procedures," of this Manual.

§ 9.8.4.1 If, upon the Architect's/Engineer's completion of the initial inspection and the second inspection, as described in paragraph 9.8.3, there remains incomplete or unsatisfactory Work, the Contractor will be back-charged for time to satisfactorily complete the Work accrued by the Owner and Architect/Engineer, including the Architect's/Engineer's consultants. Charges will be at each of the party's current prevailing rate and commence following the second inspection. The back charges will be deducted from the Project Closeout cost indicated on the Contractor's Schedule of Values.

§ 9.8.4.2 The Certificate of Substantial Completion shall establish a thirty (30) day period after the date of substantial completion within which the Contractor will have to complete all items on the accompanying punch list to the Certificate of Substantial Completion. If Contractor does not complete the punch list within the time period specified herein, then Contractor shall reimburse Owner for all architectural, consultant, attorneys' and all other fees that Owner incurs as a result of Contractor's delay.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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. Owner shall, however, have the right to continue to withhold two hundred percent (200%) of the value of defective or uncompleted items ("Punch List Items"). The Contractor shall complete the Punch List Items within thirty days of Substantial Completion of the Work, unless otherwise specifically agreed to by the Owner in writing. The amounts so retained shall be paid on a monthly pro rata basis as the Punch List Items are satisfactorily corrected and/or completed. Owner shall also have the right to withhold payment in the event Contractor has not fully paid its Subcontractors, material suppliers, laborers or others furnishing services.

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- .4 Any such property, including areas used for temporary field offices, storage sheds and material storage and assembly, shall be restored to its original condition, unless otherwise specified, without cost to the Owner.

§ 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. In the event of conflict between these Construction Documents and requirements of any Local, State or governing Federal Authority or laws, the most stringent requirement shall govern the Work.

§ 10.2.2.1 The Contractor represents that it is knowledgeable of the Occupational Safety And Health Act (OSHA) and promulgated regulations applicable to the performance of Work. The Contractor acknowledges and accepts affirmative duty of enforcing these regulations, and the Contractor shall promptly advise the Owner of investigations by the Federal safety and health inspectors at the Contractor's, subcontractor's or the sub-subcontractor's Work places or at the project site. The Contractor shall advise the Owner of the outcome(s) of all such investigations and/or inspections. The Contractor assumes full and exclusive responsibility and agrees to indemnify and hold the Owner harmless against any and all consequences arising from the Contractor's violation of regulations governing the Work of this Project, including payment of any fines, penalties and/or interest assessed in connection therewith, court costs and all attorney fees that are incurred by the Owner related thereto.

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§ 10.2.9 The Contractor acknowledges that the safety of the Owner's building occupants and visitors is of the utmost importance. The Contractor shall take no action which would jeopardize the safety of the Owner's building occupants or visitors. The Contractor shall take all necessary and appropriate steps to preclude access to the construction site by the Owner's building occupants and visitors. Contractor shall be responsible for all safety precautions and requirements related to or arising out of its Work. Any fines generated as a result of Contractor's non-compliance with a local, state, or federal safety regulation shall be the responsibility of Contractor. Any fine issued to the Owner as a result of Contractor's (including its Subcontractors, equipment lessors, suppliers, Sub-subcontractors, and any other person or entity directly or indirectly acting for the Contractor) non-compliance shall be the responsibility of the Contractor and not the Owner.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

§ 11.1.5 Refer to AIA Document A101™-2017, Exhibit A, Insurance and Bonds.

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner does not insure any equipment, scaffolding, towers, staging, forms or tools owned or rented by the Contractor; or any tools owned by mechanics, outbuilding, shops, or housing facilities.

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§ 11.2.4 Refer to AIA Document A101™-2017, Exhibit A, Insurance and Bonds.

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

uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. When a change in the Work is contemplated which may affect the Contract sum or duration of the Work, the Architect/Engineer may issue a Proposal Request, AIA Form G709, the Contractor shall promptly, but in no case longer than ten (10) working days, issue a reply or change quotation, stipulating the change in cost and/or duration as a result of the proposed change. The issuance of a Proposal Request does not, in any way, authorize commencement of the Work therein described. Should, after review and consultation with the Owner, the Architect/Engineer finds the Change Quotation by the Contractor to be acceptable, the Architect/ Engineer will issue a written Change Order to the Contractor within 30 days of receipt of the Change Quotation.

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§ 13.1.1 Contractor and all Subcontractors are responsible to comply with Indiana Code as it pertains to public works projects. The following are notable requirements set forth in IC 5-16-13, in effect as of July 1, 2015, but are not inclusive of all requirements.

- .1 Contractor shall self-perform Work of at least 15 percent of total Contract price.
- .2 Contractor and all Subcontractors, regardless of tier, shall maintain General Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- .3 Contractor and all Subcontractors, regardless of tier, shall not pay cash to its employees for Work performed on this public works Project.
- .4 Contractor and all Subcontractors, regardless of tier, shall comply with federal Fair Labor Standards Act of 1938.
- .5 Contractor and all Subcontractors, regardless of tier, shall be in compliance with workers compensation requirements of Indiana Code 22-3-5-1 and Indiana Code 22-3-7-34 and commits worker's compensation fraud if such Contractor or Subcontractor falsely classifies an employee as an independent contractor, sole proprietor, owner, partner, officer, or member of a limited liability company.
- .6 Contractor and all Subcontractor, regardless of tier, shall be in compliance with unemployment compensation system requirements of Indiana Code 22-4-1 through 22-4-39-5.
- .7 Contractor and all Subcontractors, regardless of tier, shall be in compliance with requirements for drug testing of its employees set forth in Indiana Code 4-13-18-1 though 4-13-18-7.

§ 13.1.2 Following provisions shall be in effect for Contracts awarded after December 31, 2016.

- .1 Contractor and all Subcontractors, regardless of tier, that are performing the constructing, altering, demolishing, or renovating of a public building or other structure must be qualified by the Indiana Department of Administration, and those contractors and subcontractors that are constructing, altering, or repairing highways, streets, or alleys must be qualified by INDOT.
 - .1 Suppliers of material are not required to be qualified by IDOA prior to doing work on public works projects. A "Supplier" is defined as "any person supplying materials, but no on site labor, to a Contractor or Subcontractor. IC 4-13.6-1-20.
 - .2 Contractors and Subcontractors, regardless of tier, performing work for local governmental entities awarded under Ind. Code 36-1-12 and whose contracts are less than \$300,000 are not required to have been qualified by IDOA or INDOT.
- .2 For public works by local governmental entities under Ind. Code 36-1-12, Contractor and its Subcontractors shall comply with requirements for drug testing of its employees set forth in Ind. Code 4-13-18 if estimated cost of public works Contract is at least \$150,000.
- .3 Contractor and all Subcontractors, regardless of tier, shall preserve its payroll and related records for three (3) years after completion of the project work and such records shall be open to inspection by the

Indiana Department of Workforce Development.

- 4 If Contractor or Subcontractor, regardless of tier, employs 10 or more employees, then such Contractor/Subcontractor shall provide access to a training program applicable to tasks to be performed in normal course of employee's employment. Contractor or Subcontractor may comply with this training requirement through one of following: (i) an apprenticeship program; (ii) a program offered by Ivy Tech Community College of Indiana or Vincennes University; (iii) a program established by or for Contractor Subcontractor; (iv) a program offered by an entity sponsored by U. S. Department of Labor, Bureau of Apprenticeship and Training; (v) a program that results in award of an industry recognized portable certification; (vi) a program approved by Federal Highway Administration; or (vii) a program approved by INDOT.
- 5 If Contractor or first tier Subcontractor employs more than 50 journeymen, such Contractor/first tier Subcontractor shall participate in an apprenticeship or training program that meets standards established by or has been approved by any of following: U.S. Department of Labor, Bureau of Apprenticeship and Training; Indiana Department of Labor; Federal Highway Administration; or INDOT.

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

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

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§ 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 ~~not be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to~~ Either party may seek binding dispute resolution.

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

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

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent

to binding dispute resolution litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Prior to engaging in litigation as binding dispute resolution, the parties shall endeavor to resolve their Claims informally, provided, however, that informal resolution of a Claim is not a condition precedent to binding dispute resolution through litigation.

§ 15.3.3 Either party may, within the time allowed by the statute of limitations applicable to the Claim, seek binding dispute resolution through litigation regardless of whether informal dispute resolution has occurred pursuant to Section 15.3.2.

§ 15.3.4

§ 15.4 Consolidation or Joinder

§ 15.4.1 Either party may consolidate a mediation conducted under this Agreement with any other mediation to which it is a party provided that (1) the mediation agreement governing the other mediation permits consolidation, (2) the mediations to be consolidated substantially involve common questions of law or fact, and (3) the mediations employ materially similar procedural rules and methods for selecting mediator(s).

§ 15.3.4.2 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision 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 mediation, provided that the party sought to be joined consents in writing to such joinder. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of any claim, dispute or other matter in question not described in the written consent.

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

§ 15.4 Arbitration ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 15.4.1.1 If any part of the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Contract Documents are later found to be contrary to, prohibited by or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of the Contract Documents shall not be invalidated and shall be given full force and effect insofar as possible.

§ 16.2 Notwithstanding anything herein to the contrary, pursuant to Ind. Code 36-1-12-15 and Ind. Code 5-16-6-1, the Contractor agrees:

1. That in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor nor its Subcontractors, nor any person acting on behalf of the Contractor or its Subcontractors, shall, by reason of race, religion, color, sex, national origin, ancestry or disability, discriminate against any person who is qualified and available to perform the work to which the employment relates; and

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

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

- ~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~ 2. that neither the Contractor nor its Subcontractors, nor any person acting on behalf of the Contractor or its Subcontractors, shall discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, religion, color, sex, national origin, ancestry or disability; and

3. that there may be deducted from the amount payable to the Contractor by the Owner, under this Contract, a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

4. that this Contract may be canceled or terminated by the Owner and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of this contract provision.

~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~ 16.3 In accordance with Ind. Code § 36-1-12-20, IOSHA regulations 29 C.F.R. 1926, Subpart P, for trench safety systems shall be incorporated into this Agreement and the cost for any trench safety systems shall be paid for (1) as a separate pay item; or (2) in the pay item of the principal work with which the safety systems are associated.

~~§ 15.4.4.2 Subject Contractor shall, to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~ text applicable, comply with the Owner's criminal history background and child protection index check policy(ies) and comply with applicable laws regarding such criminal history background and child protection index check policies.

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§ 16.5 STEEL PRODUCTS

§ 16.5.1 In accordance with Indiana Code § 5-16-8, if any steel products are to be used or supplied in the performance of Contractor's Work, only steel products as defined in Section 16.5.2 shall be used or supplied in the performance of this Agreement or any of the subcontracts unless the head of the public agency determines, in writing, that the cost of steel products is deemed to be unreasonable.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement~~ **16.5.2** As defined in Indiana Code § 5-16-8-1, "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly process, or processed by a combination of two (2) or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

Variable Information

PAGE 1

Franklin Middle School Boiler Replacement

Franklin, IN

SAI Project #2022-024.MSB

Franklin Community School Corporation

998 Grizzly Cub Drive

Franklin, IN 46131

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 05:42:35 EDT on 06/30/2025 under Order No. 20240047854 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

Board of School Trustees, President

(Title)

July 14, 2025

(Dated)