



Document A134 – 2009

AIA Document A134™ – 2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the 20th day of September in the year 2021.
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

**Board of Education, Pana Community Unit School District No. 8
14 W. Main Street
Pana, Illinois 62557**

and the Construction Manager:

(Name, legal status and address)

**Poettker Construction Company
400 S Germantown Road
Breese, Illinois 62230**

for the following Project:

(Name and address or location)

New Construction of an Elementary Attendance Center, as well as demolition of Lincoln Elementary and Washington Elementary Schools; for Pana CUSD#8 as identified in the Schematic Design, attached hereto and incorporated herein as Exhibit C.

The Architect:

(Name, legal status and address)

**BLDD Architects, Inc.
100 Merchant Street
Decatur, Illinois 62523**

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 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 the 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended and attached hereto, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in the amended A201–2007, which document is attached hereto and incorporated herein by reference. The term "Contractor" as used in the amended A201–2007 shall mean the Construction Manager.

§ 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be

governed by Section 5.2 of this Agreement and Article 7 of A201–2007. If the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2007 shall control adjustments to the Contract Time.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's written acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager acknowledges and understands that the Owner, as a public body, is subject to the bidding requirements of the Illinois School Code and that all trade contracts shall be publicly bid in accordance with such law and awarded by the Owner.

§ 2.1.6.1 Except as to portions of the Work for which the Construction Manager has submitted a bid to self-perform, the Construction Manager shall prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids subject to the requirements of Section 10-20.21 of the School Code (105 ILCS 5/10-20.21). The Construction Manager may provide a sealed bid to self-perform any desired construction trade. Where the Construction Manager intends to submit a bid to self-perform a particular scope of work, sealed bids must be submitted to the Owner prior to the bid opening for such construction trade and all bids will be considered at that time. The Owner shall award each scope of work to the lowest responsible responsive bidder by entering into a trade contract with such bidder using the form of trade contract attached hereto as **Exhibit A-1**. Should the need arise to complete trade work due to the failure of a trade contractor to meet requirements of its contract and/or the quality of the services required, the Construction Manager may replace the contractor with its own forces at agreed upon hourly rates.

§ 2.1.6.2 Once the Owner has awarded a bid to a trade contractor on the form of Subcontract approved by the Construction Manager and set forth on **Exhibit A-1**, the Construction Manager shall, at its option, either enter directly into the trade contract, or accept the assignment of the trade contractor agreement from the Owner to the Construction Manager on the form attached hereto as **Exhibit A-2**. Owner hereby agrees to indemnify and to hold Construction Manager harmless from and against any and all loss, cost, liability, damage or expense, including without limitation, reasonable attorneys' fees, originating or relating to the period prior to the date of the assignment of the applicable trade contract to Construction Manager, and arising out of or with respect to the failure of Owner to have performed any of the obligations of the Owner under the respective trade contracts which accrued prior to the applicable date of assignment of such trade contract to Construction Manager.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. In its review of the Drawings and Specifications and in making any recommendations regarding the Project, the Construction Manager does not assume any responsibility for design errors, omissions or inconsistencies.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201–2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any discovered inconsistencies between the Control Estimate and the revised Drawings and Specifications. Construction Manager shall undertake reasonable and necessary action and review to discover such inconsistencies.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 The Work shall be performed under contracts publicly bid by the Owner and subsequently assigned to the Construction Manager pursuant to Section 2.1.6.1.

§ 2.3.2.2 Intentionally Omitted

§ 2.3.2.3 Intentionally Omitted

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

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.6 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather,

portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. In no case will the calling or holding of a special or emergency meeting of the Board of Education constitute unreasonable delay. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document (and any amendments or addenda thereto) in force between the Owner and Architect with respect to the Project, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Construction Manager shall be compensated **Forty-Two Thousand and No/100 Dollars (\$42,000.00)**, subject to increase as otherwise set forth in this Agreement. For purposes of clarification, the (\$42,000.00) payable to Construction Manager for Preconstruction Phase services shall be in addition to the Construction Manager's Fee set forth in Section 5.1 below.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed on or before [July 31, 2019], through no fault of the Construction Manager, or the Preconstruction Phase Services required have materially changes from the original Preconstruction Phase services proposal, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed and subject to Section 7.1.6.2, payments for services shall be made monthly in proportion to services performed and otherwise in accordance with the Local Government Prompt Pay Act (50 ILCS 505/1 et seq.).

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate set forth in the Local Government Prompt Pay Act (50 ILCS 505/1 et seq.).

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract.

The Contract Sum is the Cost of the Work as defined in Section 6.1.1, plus the Construction Manager's Fee. The Construction Manager shall be paid One Hundred Percent (100%) of proportional amount of its Fee with each progress payment and the balance of its Fee shall be paid at the time of Final Payment.

§ 5.1.1 The Construction Manager's Fee:

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

The Construction Manager's Fee consists of a percentage of Cost of the Work and a lump sum general conditions for reimbursable expenses.

Percent Fee

Three and One-Half percent (3.50%) management fee and a Three-Quarter percent (0.75%) liability insurance, for a total Fee of **Four and One-Quarter percent (4.25%)**; subject to increase as otherwise set forth in this Agreement is based upon an assumed construction budget not less than \$20,840,000 and total Project costs not less than \$24,000,000. The design costs and soft costs not managed by the Construction Manager are not included in the calculation of this Fee. The fee shall be calculated to represent a percent of the total managed cost.

General Conditions

A lump sum general conditions cost of **Five Hundred Thirty Thousand and No/100 Dollars (\$530,000.00)** to provide onsite construction management services, for a 14 month construction duration. If construction duration is more than 14 months, as a necessity to the Owner, this General Conditions amount could be adjusted accordingly.

The Fee and General Conditions shall be paid in equal monthly installments pursuant to the terms of this Contract and the payment schedule to be agreed to between the parties which shall be based on the design and construction schedule.

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

With regard to any extra work for which Construction Manager is or would otherwise be entitled to a Change Order under the terms of the Contract Documents, in addition to the Costs of the Work associated with the extra work, if, or when: (i) the total construction cost of the Project exceeds \$20,840,000, or (ii) the total Project cost exceeds \$24,000,000, and thereafter, the Construction Manager shall be entitled to a Change Order equitably increasing the Contract Time and Contractor's Fee, together with increased general conditions costs.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:
N/A

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed 100 percent (100%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: N/A

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

§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work in comparison with the Control Estimate or

estimated date of Substantial Completion, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this approval in writing prior to incurring the cost.

§ 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's professional, supervisory, management and administrative personnel based upon the time expended on the Project, regardless of where such personnel are located.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior written approval.

§ 6.3 Subcontract Costs

Payments due and payable or made by the Construction Manager to Subcontractors (including without limitation, the Construction manager if the Construction Manager or a division of the Construction manager is also a Subcontractor) in accordance with the requirements of the subcontracts.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

§ 6.5.4 Jobsite office support items including field office, vehicles, office furnishings, calculators, supplies, and similar type items, reproduction costs, costs of facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone and mobile phone services, data lines, internet and associated charges at the site, radio/communications systems and equipment, reproducible interference background drawings, storage of records and reasonable petty cash expenses in connection with the Project.

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

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or any other taxes of any kind or nature imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior written approval.

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees and consultants' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval.

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

§ 6.6.10 Costs reasonably incurred by the Construction Manager in the performance of Preconstruction Phase services to the extent not described above.

§ 6.6.11 Other costs reasonably incurred by the Construction Manager in connection with the Project to the extent not described in this Section 6.6.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, including corrective costs related to improper design by the Architect, design professionals or consultants (at any tier), or Subcontractors, provided that such damaged or nonconforming Work was not caused by gross negligence or material failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not to Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Except to the extent provided in Section 6.2, expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1. through 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work except as specifically provided herein; and
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract.

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the Costs of the Work arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, the transaction may proceed. Otherwise, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Owner and any persons engaged to perform such an audit (including the audit to be performed prior to Final Payment) agree to hold as confidential and not disclose to third parties all information that they obtain during the course of the audit. In furtherance of such agreement, upon request of the Construction Manager, the Owner and any persons engaged to perform such an audit shall sign a confidentiality and non-disclosure agreement reasonably acceptable to the Construction Manager prior to performing the audit. Any persons engaged to perform such an audit shall not be compensated on a contingency fee basis or manner other than an hourly basis. The Construction Manager acknowledges the Owner is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq., and expressly exempts mandatory responses pursuant to lawful requests submitted pursuant to the Illinois Freedom of Information Act, Ibid. from this section. Construction Manager reserves the right to redact confidential pricing and cost data, and otherwise determine exempt information prior to fulfilling an Illinois Freedom of Information Act request.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided in Section 7.1.3 below and payment of the Construction Manager’s Fee pursuant to Section 7.1.6.2 below.

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

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

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Section 6.1.1, multiplied by the percentage of completion of the Work (subject to retainage).
- .2 Add the Construction Manager's Fee (not subject to retainage). Owner shall pay the sum of the Construction Manager's Fee in equal monthly installments during the time frame June 2022 through May 2023. The remaining Construction Manager's Fee, shall be paid in equal monthly installments pursuant to the terms of this Contract and the payment schedule to be agreed to between the parties which shall be based on the design and construction schedule.
- .3 Subtract retainage of five percent (5%) from the Cost of the Work;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.9 Intentionally omitted.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 [Intentionally omitted]

§ 7.2.3 [Intentionally omitted]

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs, plus ten percent (10%) on such costs applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set forth in this Agreement and in Article 11 of AIA Document A201–2007. Construction Manager and Owner shall require payment and performance bonds from trade contractors whose contracts have been assigned to Construction Manager in accordance with Article 11 of the General Conditions. Notwithstanding anything to the contrary in this

Agreement or the Contract Documents, except for tradework which Poettker Construction Company may self-perform pursuant to a subcontract, Construction Manager shall not be required to procure payment or performance bonds.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007, as amended and attached hereto.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)

Arbitration pursuant to Section 9.3 of this Agreement when the amount in dispute is less than \$100,000.

Litigation in a court of competent jurisdiction when the amount is more than \$100,000.

§ 9.3 Arbitration

§ 9.3.1 All claims, disputes and other matters in questions valued less than One Hundred Thousand Dollars (\$100,000) between the Construction Manager and Owner arising out of, or relating to, agreements to which the parties are bound, or the contract documents or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force, as modified herein, unless the parties mutually agree otherwise. The Architect, Contractors, subcontractors and material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 9.3.2 Notice of the demand for arbitration shall be filed in writing with the other party to the arbitration and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in questions would be barred by the applicable statute of limitations.

§ 9.3.3 All parties shall carry on the work and perform their duties during any arbitration proceedings, and the Owner shall continue to make payments as required by agreements and the contract document. However, at the request of any party, contested payments may be placed in an escrow account pending resolution of the dispute.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination for Convenience Prior to Owner's Approval of the Control Estimate

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007, as amended.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that

- Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Add payments due to Construction Manager for Construction Manager's Preconstruction Phase services;
 - .4 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
 - .5 Add the termination costs and expenses incurred by the Construction Manager and Construction Manager's Fee thereon.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of trade contracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such trade contracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such trade contracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination

§ 10.2.1 The Owner may terminate this Agreement at any time, for convenience or for cause in accordance with Article 14 of the A201 General Conditions, as amended. If Construction Manager is terminated for cause, Owner may, in its sole discretion, elect to require Construction Manager to assign all trade contracts back to Owner.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Owner or the Construction Manager. Owner and Construction Manager acknowledge and agree that the obligations of the Construction Manager are solely for the benefit of the Owner and the obligations of the Owner are solely for the benefit of the Construction Manager and not intended in any respect to benefit the Architect, Subcontractors, or any other third parties.

§ 11.3 Governing Law

This Contract shall be governed by the laws of the State of Illinois without regard for conflict of law principles.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007 as amended, neither party to the Contract shall assign the Contract

as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

11.5.1. The Owner represents that it is the fee simple owner of the property on which the Project will be constructed. Owner shall provide a legal description of such property to Construction Manager promptly upon request.

§ 11.5.2 If there is any conflict among the Contract Documents, then the following priority shall be given to the same: first, the provisions of this Agreement (A134) shall govern, second, the provisions of the General Conditions (A201) shall govern, and third, the provisions of the plans and specifications shall govern.

§ 11.5.3 The Owner acknowledges and agrees that Construction Manager is not a licensed architect or engineer and is not agreeing to perform services which require such a license in the State in which the Project is located. Such services will be performed by licensed architects, engineers and design-build Subcontractors under separate agreements, and said design professionals shall be solely responsible for the accuracy, adequacy and professional quality of the services provided thereby. The fees and expenses of those design professionals contracted and paid for by the Construction Manager shall be included as part of the Contract Sum.

§ 11.5.4 In accordance with state (105 ILCS 5/10-20.5b) and federal law and Board of Education Policy, smoking is prohibited on all school district property.

§ 11.5.5 The Construction Manager shall provide professional construction management services on this Project. Such professional services include substantial discretion and authority to plan, schedule, estimate, approve, coordinate, manage and direct phases of the Project, within the parameters of the Contract Documents. Owner hereby finds and Construction Manager hereby represents and concurs that professional construction management services require professional skill and experience in the construction management industry.

11.5.6 The Construction Manager agrees to fully comply with the requirement of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Construction Manager further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, and rules and regulations promulgated thereunder.

As required by Illinois law, in the event of the Construction Manager's non-compliance with the provisions of this Equal Employment Opportunity provision, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Construction Manager may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Construction Manager agrees as follows:

(a) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

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

(c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color,

religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.

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

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

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

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

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as amended
- .2 Exhibit A: AIA Document A201–2007, General Conditions of the Contract for Construction, as amended
- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit A-1	Form of Trade Contract
Exhibit A-2	Assignment and Assumption of Trade Contract
Exhibit B	Construction Manager's Cost Assignment Matrix
Exhibit C	Schematic Design
Exhibit D	Reserved
Exhibit E	Reserved
Exhibit F	Initial Construction Schedule

(Signatures on next page)

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

**PANA COMMUNITY UNIT SCHOOL DISTRICT
#8, BOARD OF EDUCATION**

POETTKER CONSTRUCTION COMPANY

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

President of the Board of Education
(Printed name and title)

Jonathan Carroll,
Executive Vice President & COO
(Printed name and title)

Attest:

OWNER *(Signature)*

Secretary of the Board of Education
(Printed name and title)

DATED

DATED

EXHIBIT A
AIA A201

(ATTACHED)

EXHIBIT A-1
FORM OF TRADE CONTRACT

(ATTACHED)

EXHIBIT A-2
ASSIGNMENT AND ASSUMPTION OF TRADE CONTRACT

(ATTACHED)

EXHIBIT B
CONSTRUCTION MANAGER'S COST ASSIGNMENT MATRIX

(ATTACHED)

EXHIBIT C
SCHEMATIC DESIGN

The schematic design information available at this time includes the following:

1. Construction of new elementary school building of approximately 60,000 sf including associated sitework.
2. New elementary school to be located on property adjacent to High School/Jr High School Buildings.
3. Demolition of Lincoln Elementary and Washington Elementary Schools, approximately 80,000 sf total.
4. Total Project Budget of \$24,000,000
5. \$19,050,000 for new building (63,500 sf.) (Includes CM Fee and general conditions)
6. \$800,000 for demo of two buildings (80,000 sf) (Includes CM Fee and General Conditions)
7. \$990,000 Construction Contingency
8. Soft costs including asbestos, furniture, technology, and design fees of \$3,137,000

EXHIBIT F
PRELIMINARY CONSTRUCTION SCHEDULE

- **PRECONSTRUCTION PHASE**
 - October 2021 – February 2022 (5 months)

- **CONSTRUCTION PHASE**
 - June 2022 – July 2023 (14 months)



TRADE CONTRACT ILLINOIS

This Document has important legal and insurance consequences; consultation with an attorney and insurance consultants and/or carriers is encouraged with respect to its completion or modification.

THIS AGREEMENT, made as of _____, 2022:

**Between the
Construction Manager:
As Assignee of Owner** **POETTKER CONSTRUCTION COMPANY
400 S Germantown Road
Breese, Illinois 62230**

And the Trade Contractor: «CONTRACTOR_NAME»
«CONTRACTOR_ADDRESS1»
«CONTRACTOR_ADDRESS2»
«CONTRACTOR_CITY», «CONTRACTOR_STATE»
«CONTRACTOR_POSTAL_CODE»

The Construction Manager has entered into a contract with Owner whereby Construction Manager is to provide construction management services. Said contract is referred to herein as the "Construction Manager Contract".

For the Project: **New Elementary School
TBD
Pana, Illinois 62557**

Owner: **BOARD OF EDUCATION, PANA COMMUNITY UNIT SCHOOL
DISTRICT #8
14 W. Main St.
Pana, Illinois 62557**

The design team representatives include:

The Project Architect: **BLDD Architects
100 Merchant Street
Decatur, Illinois 62523**

Introduction

For the purpose of this Trade Contract (hereinafter sometimes referred to as the "Contract" or "Agreement"), **POETTKER CONSTRUCTION COMPANY** is hereinafter referred to as the "Construction Manager", and «CONTRACTOR_NAME», the trade contractor, is hereinafter referred to as "Contractor".

The Construction Manager and Contractor agree as follows.

TABLE OF ARTICLES

- .5 ACKNOWLEDGEMENT OF ASSIGNMENT**
- 1 THE CONTRACT DOCUMENTS**
- 2 SCOPE OF WORK**
- 3 PAYMENTS**
- 4 PROSECUTION OF THE WORK**
- 5 CHANGES IN THE WORK**
- 6 INSURANCE AND INDEMNITY**
- 7 RESERVED**
- 8 WARRANTY**
- 9 CONTRACTORS OBLIGATIONS**
- 10 TERMINATION**
- 11 CLAIMS**
- 12 PREVAILING LAW**
- 13 INVALID PROVISION**
- 14 DEFINITIONS**

Article .5

ACKNOWLEDGEMENT OF ASSIGNMENT

1.1. This Trade Contract has been awarded to Contractor by the Owner after advertisement for bids. By submitting its bid and being awarded this Trade Contract, Contractor acknowledges and agrees that (i) Owner shall be deemed to have assigned and set over all of its right to enter into this Trade Contract and all of its interest in this Trade Contract and the Work detailed herein to its Construction Manager, Poettker Construction Company; (ii) Contractor consents to the assignment of the Trade Contract from Owner to the Construction Manager; (iii) Contactor is signing this Trade Contract as a trade contractor of the Construction Manager; and (iv) upon signing this Trade Contract, Contractor shall be a trade contractor of Construction Manager pursuant to this Trade Contract and Contractor will not have any rights under the Trade Contract against the Owner; all of Contractor's obligations under this Contract shall be enforceable by Construction Manager; and any claims of Contractor shall be against the Construction Manager. Though not a condition precedent, if requested by Owner or Construction Manager, Contractor shall sign an Assignment and Assumption of Trade Contract, or similar document, as further memorialization of the assignment as set forth in this Article .5.

Article 1

THE CONTRACT DOCUMENTS

1.2. The "Contract Documents" consist of (1) this Agreement; (2) Invitation to Bid; (3) Instructions to Bidders; (4) Bid Specifications; (5) Addenda, if any; (6) Architectural and/or Engineering Drawings; (7) Change Directives; (8) Change Orders; (9) other documents listed by Exhibits attached to this Agreement; (10) the Construction Manager Contract; and (11) Modifications to this Agreement made or issued after execution of this Agreement. These documents form this Agreement, and are as fully a part of this Agreement as if attached to this Agreement or repeated herein. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.3. The Contractor agrees anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for by the specifications, shall be of like effect as if called for and shown in both. In the event of any discrepancies or conflicts in the Contract Documents, the Contractor shall perform or include the most stringent requirement. If Contractor discovers any ambiguities or discrepancies, Contractor shall immediately submit the matter to Construction Manager for determination.

Article 2

SCOPE OF WORK

2.1 The Construction Manager engages Contractor as an independent contractor, to perform the «DETAIL_DESCRIPTION» scope of the work (hereinafter called "Contractor's Work").

2.2 Contractor's Work includes, but is not limited to the following: «SCOPE_OF_WORK_DESCRIPTION »

2.3 The following Exhibits are attached and part of this Agreement with the Contractor:

«SCOPE_OF_WORK_INCLUSIONS»

2.4 The following items are specifically excluded from this Agreement, as they are performed by other trade contractors on the Project: «SCOPE_OF_WORK_EXCLUSIONS»

2.5 Contractor shall complete the Contractor's Work per the plans and specifications. Contractor represents and warrants that the Contract Sum includes all labor, equipment, tools, supplies and materials furnished, fabricated, delivered, unloaded, stored, distributed, and installed, with all freight, surcharges, taxes, insurance, and cost escalation included.

2.6 The Contractor agrees to perform the Contractor's Work under the general direction of the Construction Manager and subject to the final approval of the Architect/Engineer and/or such additional or other specified

representative(s) of the Owner, in accordance with the Contract Documents.

2.7 Contractor shall furnish competent onsite supervision when Contractor's Work is performed at the site, and as necessary to complete the Contractor's Work.

2.8 Completion of all work related to Contractor's scope of work in accordance with applicable specified codes, state and federal regulations and safety requirements, and all local governing ordinances and authorities.

2.9 Contractor shall inspect existing conditions in areas of their work prior to mobilization and start-up. Commencing the Contractor's Work shall be deemed Contractor's acceptance of existing conditions.

2.10 Contractor is responsible for clean-up and disposal of all debris created under this scope of work into dumpsters provided by others, or as specified in paragraph 2.2 of this Agreement.

2.11 Contractor shall begin to procure submittals at the earlier of: (a) the time of formal Notice of Intent, or (b) upon receipt of this Agreement. Submission of all required shop drawings, product data, and other submittals required by the specifications will be required within two (2) weeks of contract date, or as noted in paragraph 2.2. Any costs incurred by the Contractor related to submittal procurement will not be paid if this Agreement is not executed for any reason.

2.12 Contractor shall coordinate the Contractor's Work with other affected trades prior to beginning work in this Agreement.

2.13 Contractor is responsible for all applicable sales tax applicable to Contractor's Work. If the Project is tax exempt, a certificate will be made available to the Contractor, and sales, use and other exempt tax should be excluded from the Contract Sum.

2.14 Contractor shall coordinate execution of work with jurisdictional agencies and Construction Manager's superintendent for testing required by the Contract Documents for Contractor's Work. Contractor shall provide adequate notice to Construction Manager as required to coordinate said inspections and testing procedures without delay to the Project Schedule.

2.15 Contractor is responsible for providing all required equipment for hoisting, setting, cutting, anchoring and all other required installation activities related to this scope of work, including coordinating, handling and receiving of material shipments supplied by others to be installed under this Agreement.

2.16 Contractor shall coordinate with all utility companies, both existing and proposed, in order to prevent elevation interference conflicts.

2.17 If deemed necessary by Construction Manager's superintendent or if Contractor is on the weekly Detail

Schedule in order to coordinate work, Contractor shall have a representative attend coordination meetings, job-site safety meetings and all related project meetings as necessary to coordinate their scope of work with other trades. Should Contractor fail to have a representative with authority present at these meetings, Construction Manager may fine Contractor \$500 per offense.

2.18 Contractor shall comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) Permit and governing laws, Storm Water Pollution Prevention Plan (SWPPP) as defined in the Contract Documents, Best Management Practices (BMP's) as defined by the governing authority. Contractor will be held accountable for deficiencies in these areas as it relates to its scope of work, which could involve fines or penalties imposed by the Owner or jurisdictional agencies.

2.19 Contractor shall comply with all immigration enforcement rules and regulations pertaining to their labor, including, cooperation and participation in an employee identity verification and security badge system. Failure to cooperate and participate in this program could involve fines assessed by the Construction Manager against Contractor, of which, the Contractor will be held responsible for reimbursement.

2.20 By bidding the project, the Contractor understands that this is a schedule driven project. The Contractor is hereby committing adequate forces as well as night shift work and/or overtime as may be required to meet the construction start date, the date for substantial completion and date for final completion of all construction indicated in the Contract Documents, and Construction Manager's Project Schedule. The Contractor agrees to complete punch lists work in a timely manner and on or before the date of final completion established by the Construction Manager. The Contractor agrees it has sole responsibility to provide all necessary labor, equipment materials, tools, and whatever else is necessary to perform the Contractor's Work without interruption and on or before the stipulated dates indicated in the Contract Documents and Project Schedule provided by the Construction Manager. Failure to do so may subject the Contractor to liquidated damages as specified in the Contract Documents.

2.21 Should any questions arise with respect to the interpretation of the drawings and specifications, they shall be referred to the Construction Manager. If the Construction Manager and Contractor cannot mutually agree upon the correct interpretations of such questions, they shall be submitted to the Architect/Engineer and their decision shall be final and binding. If there is no Architect/Engineer for this Project, the Construction Manager's decision shall be followed by the Contractor. Each party shall at all times during the work have a duly appointed representative on the job site who is authorized to act for the respective party concerning this Contract.

2.22 Contractor shall require everyone on the project site wear a hard hat at all times. Additionally, all of Contractor's subcontractors shall comply with all applicable regulations and requirements for safety and health including but not limited to federal, state, municipal, and with

Construction Manager's safety policies. The most stringent requirement takes precedence.

2.23 The Contractor represents and warrants to the Construction Manager that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Contractor's Work; that the Contractor is able to furnish the tools, materials, supplies, equipment and labor, and is experienced in and competent to perform Contractor's Work; that the Contractor is qualified to do the Contractor's Work herein and is licensed and authorized to do business in the State where the Project is located; and that the Contractor holds a license, permit, or other special license to perform the Contractor's Work as required by law.

2.24 The Contractor warrants that the Contract Documents are full, complete and sufficient to have enabled the Contractor to determine the price of the Contractor's Work, to enter into this Agreement and that the Contract Documents are sufficient to enable it to complete the Contractor's Work outlined herein and the Contract Documents and otherwise to complete all of its obligations hereunder for an amount not in excess of the price herein on or before the date of completion established in the Contract Documents.

2.25 The Contractor has visited the site and is fully familiar with all conditions affecting the Project. Further, the Contractor warrants that it has satisfied itself as to the nature, location and character of the job site, including without limitation the surface and subsurface conditions of the job site and all structures and obstructions thereon and thereunder, the nature, location and character of the area in which the Project is located, including its climatic conditions, available labor supply and labor costs, available equipment supply and equipment costs and the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Contractor's Work in the manner and within the cost and timeframe required by the Contract Documents.

2.26 The Contractor represents that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contract Documents as they pertain to the Contractor's Work.

2.27 Contractor binds itself to the Construction Manager for the performance of Contractor's Work such that Contractor will meet and comply with all requirements, responsibilities, obligations and restrictions of the Construction Manager under Construction Manager's Contract with the Owner. The pertinent parts of the Construction Manager Contract will be made available upon Contractor's request. The Construction Manager shall have the benefit of all rights, remedies, and redress against the Contractor that the Owner has against the Construction Manager.

2.28 All representations, indemnifications, and warranties made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in the Agreement, will survive Final Payment, completion and Final Acceptance of the Work and termination or completion of the Agreement, and any task orders there under.

Article 3

PAYMENTS

3.1 Provided that no reason exists for withholding payment pursuant to paragraph 3.10 or otherwise under the provisions of this Agreement, the Construction Manager agrees to pay to the Contractor for the satisfactory completion of Contractor's Work, the sum of **\$«SCOPE_OF_WORK_CONTRACT_AMOUNT»** ("Contract Sum").

3.2 Payment shall be made in monthly payments of 90% of the value of the work performed in any preceding month, in accordance with estimates prepared by the Contractor and approved by the Construction Manager and Owner. The remaining 10% value of work shall be retained until Final Payment, unless otherwise provided in the Contract Documents.

3.3 Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Project but delivered to and suitably stored onsite or offsite at a location agreed upon in writing, including applicable insurance, storage and costs incurred in transporting to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Contractor of bills of sale and proof of required insurance, or such other procedures satisfactory to the Construction Manager to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Construction Manager and Owner's interests therein, including transportation to the site.

3.4 Contractor shall provide completed lien waivers and supplier affidavit forms, in a form satisfactory to the Construction Manager with each estimate.

3.5 Payment of the approved portion of the Contractor's monthly estimate shall be conditioned upon receipt by the Construction Manager of its payment from the Owner, and Contractor agrees that payment by the Owner is a condition precedent to the Construction Manager's obligation to pay the Contractor.

3.6 Approval and payment of Contractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Construction Manager or Owner of any portion of the Contractor's Work. In no case shall the Construction Manager be held responsible for payment to the Contractor for work not paid by the Owner to the Construction Manager.

3.7 Contractor shall submit monthly estimates to the Construction Manager by the 20th of each month. All such estimates shall be sent electronically to ap@poettkerconstruction.com, copying the Construction Manager's Project Manager by email. In the event the Contractor does not submit such monthly estimates to the Construction Manager by the 20th of the month, then the Construction Manager may, at its option, include in its monthly estimate to the Owner, for Contractor's Work performed during the preceding month, such amount as Construction Manager may deem proper for the work of the Contractor for the preceding month; and the Contractor

agrees to accept such approved portion thereof in lieu of monthly payment based upon the Contractor's estimate.

3.8 In the event it appears to the Construction Manager that the labor, material and other bills incurred in the performance of Contractor's Work are not being currently paid, the Construction Manager, may take such steps as Construction Manager deems necessary to insure that the money paid with any progress payment will be utilized to pay such bills, including directing that any amounts due to the Contractor under this Agreement be paid jointly to both the Contractor and the unpaid vendor or subcontractor.

3.9 The Construction Manager may deduct from any amounts due or to become due to the Contractor any sum or sums owing by the Contractor to the Construction Manager pursuant to this Agreement or any other agreement between Construction Manager and Contractor. In the event of any breach by the Contractor of any provision or obligation of this Agreement or any other agreement between Construction Manager and Contractor, or in the event of the assertion or threat by other parties of any claim or lien against the Owner, the Construction Manager, Construction Manager's Surety, or the Project, which claim or lien arises out of the Contractor's performance of this Agreement or any other agreement between Construction Manager and Contractor, the Construction Manager shall have the right, but is not required, to retain out of any payments due or to become due to this Contractor an amount sufficient to completely protect (and if necessary, reimburse) the Construction Manager from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by the Contractor to the satisfaction of the Construction Manager. This paragraph shall be applicable even if the Contractor has posted a full payment and performance bond.

3.10 For the purpose of evaluating partial billings and payment, an itemized Schedule of values (SOV) of the various portions of the Contractor's Work, aggregating the total Contract Sum, shall be submitted for approval prior to the first payment application. This SOV shall include as separate and distinctive items, the various subcontractors, equipment suppliers, major material suppliers, and major labor items. Any materials listed from Contractor's stock, shall not exceed \$10,000 unless approved by Construction Manager. The approved SOV shall then be used by the Contractor on all monthly estimates.

3.11 Prior to making any payments to the Contractor, the Construction Manager must receive and approve proof of insurance as required in Article 6 of this Agreement.

3.12 Payments otherwise due may be withheld by Construction Manager, when defective Contractor Work has not been remedied, a claim has been, or it is reasonably anticipated that a claim may be submitted to Contractor, Contractor has failed to make payments to its subcontractors for materials or labor, or it is reasonably anticipated that the this Agreement cannot be completed for the balance remaining unpaid. If the foregoing causes are rectified, the withheld payment shall be made promptly. If any lien or claim arises after final payment is made, Contractor shall pay the claim or offer a bond to discharge

the claim. If Contractor fails to do so within a reasonable time, Construction Manager may pay the amount, which will be reimbursed by the Contractor.

3.13 The Contractor shall submit a separate retention only final estimate upon completion and Final Acceptance of Contractor's Work. This shall be considered the Final Payment estimate.

3.13.1 Final Payment shall be paid to the Contractor upon approval by the Owner, Architect and the Construction Manager of the Contractor's Work and no later than fifteen (15) days after payment having been received by the Construction Manager for all of Contractor's Work and satisfactory evidence having been received by the Construction Manager that all payrolls, including customary fringe benefits and payments due under collective bargaining agreements, bills for materials and equipment, all known indebtedness related to Contractor's Work, and all subcontractors and suppliers have been paid to date and are waiving their lien rights upon the final payment of a specific balance due. Acceptance of final payment by the Contractor shall constitute a waiver of claims by the Contractor, except those previously made in writing and identified by the Contractor as unsettled at the time of final application for payment.

3.13.2 All final lien waivers, manufacturer and supplier warranties and other final project documents required by the Contract Documents and this Agreement in relation to the Contractor's Work shall be submitted and approved prior to Contractor's Final Payment estimate. Final Payment will not be issued until all required final documentation is approved by the Construction Manager, Owner, and Architect.

Article 4

PROSECUTION OF THE WORK

4.1 Time is of the essence for both parties, and they mutually agree to see to the performance of their work and the work of their subcontractors so that the entire project may be completed promptly, in a good and workmanlike manner and in accordance with the Contract Documents. The Contractor shall, at all times, provide the materials, equipment, shoring, scaffolding, tools, labor and competent supervision necessary to complete Contractor's work in a timely manner. The Contractor shall provide the Construction Manager with scheduling information and Contractor's proposed weekly schedule for the Contractor's Work, including durations and manpower. The Construction Manager shall then prepare the Detail Schedule of the Contractor's Work as it relates to the overall Project Schedule and, as may be necessary, revise such Detail Schedule as the Contractor's Work progresses. Contractor acknowledges that revisions may be made in the Project Schedule and Detail Schedule and agrees to make no claim for acceleration or delay by reason of such revisions so long as such revisions are of the type normally experienced in the scope and complexity of Contractor's Work.

4.2 The Contractor shall prosecute Contractor's Work in a prompt and diligent manner in accordance with the Project Schedule and/or Detail Schedule without hindering the work or progress of the Construction Manager or any trade contractor. If work of others is damaged by Contractor, the Contractor will cause such damage to be corrected to the satisfaction of and without cost to the Construction Manager and Owner. If Contractor's Work is damaged by others, then Contractor waives any right to recover overhead or profit in connection with the repair or replacement of such Contractor's Work unless and to the extent such overhead or profit is paid by any applicable insurance proceeds. In the event Contractor fails to maintain its part of the Project Schedule and/or Detail Schedule, it shall, without additional compensation, work such overtime as the Construction Manager may direct until Contractor's Work is in accordance with such schedules. Additionally, any costs required to bring Contractor's Work into conformity with such schedules shall be without additional compensation.

4.3 The Contractor shall be responsible for and will prepare for performance of Contractor's Work, including without limitation thereto, the submission of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Project and/or Detail Schedules. Contractor shall notify Construction Manager when portions of the Contractor's Work are ready for inspection.

4.4 The Contractor shall keep and maintain daily progress logs of the Contractor's Work, including labor, equipment, material, and deliveries of own forces and any subcontractor forces; as well as progress of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture. Contractor shall furnish such logs to Construction Manager as requested.

4.5 The Contractor shall cooperate with the Construction Manager and other trade contractors whose work may interfere with the Contractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising the Construction Manager of any interference by other trade contractors or subcontractors. If the Contractor's Work includes the installation of materials or equipment not supplied by Contractor, then Contractor shall be responsible for requesting copies of all shop drawings, samples or other submittals relating to such materials or equipment and approving such submittals prior to commencement of Contractor's Work. Commencement of Contractor's Work shall be deemed to be an approval of all such shop drawings, samples and/or other submittals.

4.6 The Contractor shall keep the job site orderly and clean at all times. The Contractor's tools and materials shall only be stored on the job site at such locations and in such manner as is approved by the Construction Manager. If the Contractor fails to clean and organize the job site contrary to provisions hereof, the Construction Manager shall be permitted to perform such necessary clean-up and deduct the cost of such work from amounts due to the Contractor.

4.7 The Contractor shall give adequate notices pertaining to the Contractor's Work to proper authorities and secure and pay for all necessary licenses, permits and royalty fees to carry on Contractor's Work; the furnishing of which is required by the Contract Documents. The Contractor shall defend all suits or claims for infringement of any patent rights involved in the work of the Contractor.

4.8 The Contractor shall comply and cause all of its subcontractors to comply with all Federal, State and local laws and regulations, Social Security Laws and Unemployment Compensation Laws, Immigration Laws, Workers' Compensation Laws, Safety Laws and wage, salary and price regulations insofar as applicable to the performance of this Agreement. Contractor shall also maintain its own safety program for compliance with such laws and shall further comply with the Construction Manager's safety requirements and the Construction Manager's compliance plans regarding any such laws to the extent they are brought to its attention.

4.8.1. Pursuant the Davis-Bacon Wage Act and the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and the regulations promulgated thereto, Contractor agrees that not less than the general prevailing rate of hourly wages for Work of a similar character on public Works in the locality in which the Work is performed, and not less than the general prevailing rate of hourly wages for legal holiday and overtime Work, shall be paid to all laborers engaged in the construction of this public work. Contractor shall ensure that its subcontractors comply with the requirements of the Illinois Prevailing Wage Act. The provisions of the Contract Work Hours and Safety Standards Act and the regulations promulgated pursuant thereto shall apply to the construction of this public work.

4.8.2. Contractor agrees that it shall abide by and comply with all applicable local, State and Federal laws relating to fair employment practices and prohibiting discrimination in employment contracts involving public funds, the construction or development of public Works, buildings, or facilities. The Contractor shall not discriminate on the basis of age, race, color, national origin, religion, sex, sexual orientation, or sexual identity, in the performance of this Contract.

4.9 Any duty on the part of Construction Manager in connection with the safety of persons or property at or near the job site is intended solely to benefit the Owner and is not intended to benefit Contractor or any third person or entity who may be injured or damaged as a result of the Work. Construction Manager and Contractor specifically state that they do not intend to confer any third-party beneficiary status on any other person or entity nor do they intend, by this Agreement or their activities on the job site, to create any duty on the part of the Construction Manager as to any person or entity on the job site. The Contractor agrees that Contractor is the most knowledgeable as to how to safely perform the Contractor's Work. Although the Construction Manager may advise the Contractor if the Construction Manager believes there is some unsafe condition or activity on the job site, the sole responsibility for preventing injuries and accidents to Contractor's employees shall rest upon the Contractor.

4.10 The Contractor will not assign this Agreement, nor subcontract the whole or any part of the Contractor's Work to be performed hereunder, without the prior written consent of the Construction Manager, with the exception of those subcontractors listed by the Contractor and furnished to the Construction Manager at the time this Agreement is executed.

4.11 If the Contractor's Work includes the furnishing of architect's, engineer's or other design services, Contractor shall cause such services to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. The Construction Manager and the Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services performed by such design professional. The Contractor shall be responsible to the Construction Manager and the Owner for the acts and omissions of such design professional. Further, the Contractor shall be responsible for providing or causing such professional to carry and maintain professional liability insurance for claims arising from the performance of such professional services, all as set forth in Article 6 hereof. Any fees or expenses of such services are included in the Contract Sum.

4.12 The Contractor agrees that no labor dispute of any kind involving the Contractor, or its employees or agents, shall be suffered or permitted to occur or be manifested on the Project and the Contractor agrees to that end to only employ persons on the Project who will work at all times in harmony with other persons employed on the Project.

4.12.1 The Contractor agrees that its employees shall not participate in or accede to any interference with the performance of work by other persons on the project, including but not limited to work stoppages, slow downs, or other job actions, whether or not such interference is the result of any labor dispute.

4.12.2. Should there be a work stoppage, slow down or any type of interference with the performance of Contractor's Work involving the Contractor or its employees, including but not limited to informational or other picketing or hand billing, strikes, slowdowns, or other interference with work directed to or involving Contractor or its employees or operations, resulting from a labor dispute and which in the judgment of the Construction Manager will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice the Construction Manager shall have the right to declare the Contractor in default under this Contract and take such steps as are necessary to finish the uncompleted portion of the Contractor's Work. In such event the Construction Manager shall have the right to take possession of and use all of the Contractor's materials (exclusive of tools) intended for use on the Contractor's Work. The cost of completion including all expenses, attorneys' fees and costs incurred in resolving the labor dispute shall be charged against any money then due or thereafter to become due to Contractor under this Agreement. If such cost of completion and other charges exceed the balance due Contractor, Contractor agrees to promptly pay the difference to the Construction Manager.

4.13 The parties recognize that the employment, discipline and discharge of the Contractor's employees are the sole and exclusive province and responsibility of Contractor. Nothing herein shall be understood or construed as a request or requirement on the part of the Construction Manager that Contractor hire, discipline, or discharge any person; provided, however, that if the Owner requires the Construction Manager to remove any individual or subcontractor from the Project, then Contractor shall promptly remove such individual or subcontractor from the Project.

4.14 The Contractor, including but not limited to its agents, representatives, employees, subcontractors and suppliers (collectively "Contractor") acknowledges that the terms of this Agreement and the Contract Documents provided by the Owner may contain non-public proprietary information including without limitation, trade secrets, patented or proprietary processes of the Construction Manager or Owner, pricing and completion terms, overall project costs and general conditions all of which the Contractor agrees to keep confidential (the "Confidential Information"). Contractor shall protect the Confidential Information from disclosure except as necessary for the completion of its Work, or the work of Contractor's accountants, tax preparers and agents or as may be ordered disclosed by a court of law. For purposes of this Agreement, the term "Confidential Information" will also mean design and/or performance criteria, applications for payments, financial data, business and marketing plans, sales and pricing strategies, and any other information marked as Confidential Information. Accordingly, Contractor shall not disclose to third parties nor use any Confidential Information, except in the limited instance that such Confidential Information at the time of receipt from Construction Manager or Owner, was in Contractor's prior possession, or thereafter becomes a matter of public knowledge other than by reason of breach of this Agreement, or that may thereafter be obtained by Contractor from a third party who is not under the obligation of secrecy or confidentiality to Construction Manager or Owner; and that unless approved by Construction Manager, Contractor shall not at any time publish or otherwise disclose engagement by Construction Manager under this Agreement except as is necessary in the performance of the Work.

Article 5
CHANGES IN THE WORK

5.1 The Contractor agrees that the Construction Manager may add to or deduct from the amount of the Contractor's Work covered by this Agreement, and any changes so made in the amount of Contractor's Work involved, or any other parts of this Agreement, shall be by a written amendment (Change Order) hereto setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon in signed writing between the Construction Manager and Contractor. The Contractor agrees to proceed with the Contractor's Work as changed when so ordered in writing by the Construction Manager so as not to delay the progress of the Contractor's Work,

pending any determination of the value thereof, unless Construction Manager first requests a proposal of cost before the change is affected. If the Construction Manager requests a proposal of cost for a change, the Contractor shall promptly comply within 5 business days of such request.

5.2 Contractor shall be entitled to receive no extra compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by the Construction Manager or any of its representatives unless a Change Order therefore has been issued in writing by the Construction Manager. If extra work was ordered by the Construction Manager and the Contractor performed same but did not receive a written order therefore, the Contractor shall be deemed to have waived any claim for extra compensation, regardless of any written or verbal protests of claims by the Contractor. The Contractor shall be responsible for any costs incurred by the Construction Manager for changes of any kind made by the Contractor that increase the cost of the work for either the Construction Manager or other trade contractors when the Contractor proceeds with such changes without a written order therefore.

5.3 The Contractor agrees that no claim for additional services rendered or materials furnished by the Contractor to the Construction Manager shall be valid unless notice is given to the Construction Manager prior to the furnishing of the services or material or unless written notice of the claim and amount thereof is given by the Contractor to the Construction Manager on approved form not later than the last day of the calendar month following that in which the claim originated.

5.4 The Contractor will make all claims for extra compensation and for extension of time to the Construction Manager promptly in accordance with this Article and consistent with the Contract Documents.

5.5 Notwithstanding any other provision, if the work for which the Contractor claims extra compensation is determined by the Owner or Architect not to entitle the Construction Manager to a Change Order or extra compensation, then the Construction Manager shall not be liable to the Contractor for any extra compensation for such work, unless Construction Manager agrees in writing to extra compensation.

5.6 Contractor agrees that there shall be no backcharges or change orders submitted for work which is shown on the Contract Documents as work to be completed under the Contractor's Work.

5.7 Contractor agrees to submit change order proposals per Construction Manager's requirements and forms. The Construction Manager may, at any time during the progress of the Contractor's Work, alter, change, subtract from or add to the plans and specifications or scope of work without violating the contract terms thereof.

Article 6

INSURANCE AND INDEMNITY

6.1 The Contractor shall file with the Construction Manager copies of completed certificates of insurance, satisfactory to Construction Manager, to afford protection against all claims for damages to public or private property and injury to persons arising out of Contractor's Work as stated below or as provided in the Contract Documents, whichever is greater:

6.1.1. Contractor shall require all of its subcontractors providing equipment, materials or services directly to Contractor in connection with this Agreement to obtain, maintain and keep in force coverages in accordance with the greater of insurance requirements set forth in this Agreement and the Contract Documents during the time they are involved in performance of services or other work hereunder. Contractor shall obtain certificates of insurance evidencing such coverage prior to performing any of the Contractor's Work, and provide such certificates upon request of Construction Manager. Contractor shall not be excused from its obligations to cause its subcontractors of any tier to meet the greater of the insurance coverage requirements set forth in this Agreement or the Contract Documents unless Contractor shall have obtained in writing from Construction Manager a written waiver, which shall be effective only to such requirements and for such subcontractor specifically identified therein.

6.1.2. Employers' Liability and Workers' Compensation: The Contractor shall furnish evidence that it carries employers' liability and workers' compensation insurance. Employers' liability insurance limits shall not be less than \$1,000,000 per accident, \$1,000,000 per person for occupational disease, and \$1,000,000 policy aggregate for occupational disease.

6.1.3. Commercial General Liability: Contractor shall furnish evidence that Contractor carries Commercial General Liability insurance providing for a limit of not less than \$1,000,000 per occurrence/per project for all damages arising out of bodily injuries including death to persons and for all damages arising out of injury or destruction of property in any one accident, and subject to total or aggregate limit of \$2,000,000 (per project) for all damages arising out of injuries to person or destruction of property during the policy period. General Liability insurance must include premises/operations, underground explosion and collapse, products and completed operations for at least three (3) years after final payment or longer if required by the Contract Documents, as well as contractual liability coverage for the Contractor's indemnity obligations hereunder.

6.1.3.1. If Contractor is required to furnish an external insulating finish system or deal with asbestos or any hazardous materials or pollutants or if specified by Construction Manager or required by the Contract Documents, Contractor shall carry environmental impairment/pollution liability insurance providing coverage on an occurrence basis for environmental hazards, including without limitation, lead, mold, asbestos and external insulating finish systems and to include sudden

and accidental and environmental clean up with a combined single limit of \$1,000,000. Such insurance shall be maintained at least three (3) years after final payment. Such policy shall include Contractor as additional insured on a primary and non-contributory basis. Subcontractor must also include a waiver of subrogation in favor of Contractor.

6.1.4. Automobile Liability: Contractor shall furnish evidence that Contractor carries automobile liability insurance providing a limit of not less than \$1,000,000 for bodily injury, including death to persons and injury or destruction of property in any one accident. Automobile liability insurance must include owned, non-owned and hired car liability.

6.1.5. Umbrella Liability: Contractor shall furnish evidence that Contractor carries Umbrella liability insurance providing a limit of not less than \$2,000,000 for bodily injury, including death to persons, and injury or destruction of property, in any one accident. The policy shall follow form with Contractor's other liability policies and shall not require horizontal exhaustion of any primary insurance carried by Owner or Construction Manager or their respective consultants or subcontractors.

6.1.6. Additional Insured and Waiver of Subrogation: The above policies of insurance shall include Construction Manager, the Owner and the Architect/Engineer as additional insured parties on a primary and non-contributory basis, including without limitation completed operations coverage, as respects all work performed by Contractor and shall include coverage for the contributory negligence of the additional insured parties. The Contractor's liability insurance and umbrella insurance coverage shall be exhausted before any of the Owner's or Construction Manager's insurance shall be available. Additional insured endorsement should be **ISO CG2010 (11 85) and ISO CG2037** or equivalent, and a copy of such endorsement shall be furnished with the certificate of insurance. Contractor must waive all rights against Construction Manager, Owner and Architect/Engineer and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers' compensation and employers' liability insurance maintained, per requirements stated above. Certificates of insurance must provide for said waiver of rights of subrogation to the extent permitted by law and must provide for 30 days written notice to Construction Manager prior to change or cancellation of any insurance policy coverage evidenced by said certificate.

6.1.7. Professional Liability: If the Contractor's work includes the furnishing of architect's, engineer's or other design services, then the Contractor or such architect, engineer or design professional, shall carry and maintain professional liability insurance for claims arising from the performance of such services with a minimum limit of Two Million Dollars (\$2,000,000.00) per claim and in the aggregate and with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000.00). Such insurance shall be maintained until at least one (1) year after final payment.

6.2 Insurance Form and Duration: All of insurance herein specified shall be in a form acceptable to Construction Manager and shall be carried until all Contractor's Work is satisfactory as evidenced by Final Acceptance. Coverage must be commercial general liability "occurrence" form. "Claims-made" form will not be accepted. Minimum required limits can be a combination of Primary and Umbrella policies. Prior to starting work, the Contractor shall obtain and until final payment is made, maintain and pay for such insurance coverages of the types and with the minimum limits set forth herein. Products and completed operations insurance shall be maintained until at least three years after final payment. Contractor shall furnish certificates of insurance required hereunder to the Construction Manager before beginning work. However, the failure to provide such certificates of insurance prior to beginning Contractor's Work, shall, in no manner, be deemed a waiver of the requirement to provide such insurance and the failure of the Construction Manager to insist upon the providing of such certificates of insurance shall, in no manner, be deemed to be a waiver of the requirement of providing such insurance. Contractor acknowledges that the cost of the insurance required under this Agreement is included in the Contract Sum. The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Construction Manager.

6.3 In the event Contractor fails to obtain or maintain the greater of any insurance coverage required under this Agreement or the Contract Documents, Construction Manager may purchase such coverage and charge the expense thereof to Contractor or terminate this Agreement.

6.4 Indemnity: To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel satisfactory to the Construction Manager) and hold harmless the Construction Manager, Owner, Architect/Engineer and the consultants, agents and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert witness fees, investigation costs and related expenses arising directly or indirectly out of the obligations herein undertaken or arising out of operations conducted by the Contractor, the Contractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, except claims, damages or litigation to the extent caused by or resulting from the negligence, recklessness or intentional misconduct of the party indemnified hereunder. Such obligation shall not negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. The parties intend that the Contractor's commercial general liability insurance shall provide coverage for such indemnity obligations as well as coverage for the indemnified parties' contributory negligence as provided above. If the required insurance is not maintained as required, then the Contractor's indemnity obligation shall apply as though the required insurance were in effect. In any and all claims against the Owner and/or Construction Manager or any of their respective agents, members, officers, directors, shareholders or employees by any employee of the Contractor, anyone

directly or indirectly employed by him or anyone for whose acts Contractor may be liable, the indemnification obligation under this Paragraph 6.4 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts. The obligations of the Contractor under this Paragraph 6.4 shall not extend to the liability of the Architect/Engineer, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect/Engineer, its agents or employees.

Article 7

BONDS

7.1 A Performance Bond and a Labor and Material Payment Bond in forms satisfactory to the Construction Manager shall be furnished in the full amount of this Agreement, if requested by the Contractor. This obligation shall continue throughout the Agreement and may be required at any time during the performance of Contractor's Work by a Change Order, as provided in Article 5. The Contractor has included the premium cost for such bonds in the contract price.

Article 8

WARRANTY

8.1 The Contractor agrees to promptly make good without cost to the Owner or Construction Manager any and all defects due to faulty workmanship and/or materials which may appear within the greater of (1) one year from the date of completion and Final Acceptance of the entire Project by the Owner or (2) as otherwise specified and established in the Contract Documents. If there is no limitation on the guaranty or warranty period established in the Contract Documents, then no limitation shall apply. The Contractor further agrees to execute any special guarantees as provided by the terms of the Contract Documents and included in Contractors Work, prior to final payment.

Article 9

CONSTRUCTION MANAGER'S OBLIGATIONS

9.1 Contractor binds itself to the Construction Manager such that Contractor's performance of Contractor's Work shall be such as Contractor will meet and comply with all requirements, responsibilities, obligations and restrictions of the Construction Manager under Construction Manager's contract with the Owner.

9.2 Reserved.

9.3 Construction Manager shall not issue or give any instruction, order or directions directly to employees or

workmen of the Contractor other than to the persons designated as the authorized representative(s) of the Contractor.

9.4 Liquidated damages for delay, if provided for in the Contract Documents, may be assessed against the Contractor to the extent caused by the Contractor or any person or entity for whose acts the Contractor may be liable. The Construction Manager shall make no demand for liquidated damages in any sum in excess of the amount specifically named in this Agreement or the Contract Documents. This provision does not preclude any claim the Construction Manager may have for direct damages under law.

9.5 The Contractor will furnish those temporary facilities and services required by the Contractor, including but not limited to, drinking water, office and any other shelter, engineered layout, necessary temporary construction utilities including hook-ups, items not specifically identified as Construction Manager-furnished items in Article 9, and as noted in paragraph 2.2. Adequate storage area, if available, will be allocated by the Construction Manager for the Contractor's materials and equipment during the course of the Project. The Contractor is responsible for safe and secure storage of materials and equipment, including enclosures and/or containers to be located onsite.

9.6 Reserved.

9.7 The Construction Manager shall have no obligation to make payment to Contractor for its work hereunder until Construction Manager has received payment therefore from Owner or its agent.

Article 10

TERMINATION

10.1 Should the Contractor fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the Contractor's Work with promptness and diligence, or fail to promptly correct defective work or fail in the performance of any of the agreements herein contained, the Construction Manager may, at its option, perform the Contractor's obligations and utilize the Contractor's equipment and materials on the job site in connection therewith. The Construction Manager may provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to the Contractor under this Agreement.

10.2 If the Contractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute Contractor's Work with promptness and diligence, or cause by any action or omissions the stoppage or interference with the work of the Construction Manager or other trade contractors, or fail in the performance of any of the covenants herein contained, or in any other agreement between Contractor and

Construction Manager, or be unable to meet its debts as they mature, the Construction Manager may at its option at any time after serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and the Contractor fails to cure the default, terminate the Contractor's employment by delivering written notice of termination to the Contractor. Thereafter, the Construction Manager may take possession of the plant and work, materials, tools, appliances and equipment of the Contractor at the building site, and through himself or others provide labor, equipment and materials to prosecute Contractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of the Contractor's failure to perform, from any money then due or thereafter to become due to the Contractor under this Agreement. Such charges and expenses shall include the time spent by Construction Manager's administrative personnel including without limitation company executives and Project Managers.

10.3 If the Construction Manager so terminates the employment of the Contractor, the Contractor shall not be entitled to any further payments under this Agreement until Contractor's Work has been completed and accepted by the Owner and Construction Manager with respect thereto. In the event that the cost of completion and other charges provided in paragraph 10.2 above exceed the balance due to the Contractor, the Contractor agrees promptly to pay the difference to the Construction Manager.

10.4 Construction Manager shall have the right to terminate this Contract with no further obligation to Contractor beyond fair compensation for such Contractor's actual services rendered through the date of termination if (a) Contractor files for protection under the federal bankruptcy laws or if any involuntary bankruptcy proceeding is filed against it which is not dismissed within 10 days after filing; (b) Contractor makes a transfer or assignment of its assets for benefits of creditors; (c) the Owner requires Construction Manager to remove Contractor from the Project; or (d) the Owner terminates its contract with the Construction Manager for any reason, with or without cause.

Article 11

CLAIMS

11.1 The Contractor shall make all claims in writing to the Construction Manager not later than the last day of the calendar month following that in which the claim originated.

11.2 All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof not resolved between the parties through non-binding mediation, if pursued, shall be decided through litigation commenced and pursued in the Circuit Court of Christian County, Illinois. The prevailing party in any such court action shall be entitled to recover its attorneys' fees, expert witness fees, investigation costs and related expenses from the other party.

11.3 Reserved.

11.3.1. Should the Construction Manager enter into mediation or litigation with the Owner or others regarding matters relating to this Agreement, the Contractor consents to being joined as a party to such mediation or litigation. Contractor shall be bound by the result of any mediation to the same degree as the Construction Manager.

11.4 Contractor represents, warrants, stipulates, and agrees that it is solely and exclusively in charge of and responsible for its own equipment, scaffolds, working structures and machinery, and is solely and exclusively responsible for the maintenance and safe working operations and conditions of said equipment, scaffolds, working structures and machinery. Contractor represents, warrants, stipulates, and agrees that it is solely and exclusively responsible for notifying its employees of the proper and safe utilization of all equipment, scaffolds, working structures and machinery; for notifying its employees of safe operating conditions and procedures, and that Construction Manager does not assume any responsibility for any such equipment, scaffolds, working structures or machinery, or such notification.

11.4.1 Contractor hereby represents, warrants, stipulates, and agrees that any and all equipment, scaffolds, working structures and machinery furnished by Contractor and/or used by Contractor's employees are in compliance with, and at all times will be kept in compliance with, any and all applicable federal, state, and local laws, ordinances, regulations, statutes, codes and safety standards, including, but not limited to, all of the Rules, Regulations and Safety Standards under the Federal Occupational Safety and Health Act and any applicable state Safety and Health Act. Contractor expressly assumes any and all liability for any and all claims or damages resulting from a violation of any such standards.

11.5 Contractor shall indemnify and hold Owner, Construction Manager and their respective officers, directors, shareholders, members, servants, agents, and employees harmless from any and all liability, penalties, demands, claims, causes of action, expenses, suits, damages or injury of any kind (including the cost of defense, settlement, and attorney's fees, expert witness fees, investigation costs and related expenses), which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of any breach by Contractor of any representation, warranty, stipulation or agreement of Contractor hereunder.

11.6 In any action by any employee of Contractor against Construction Manager or Owner under any state or municipal statute or law, Contractor shall assume the defense of such action, retain counsel of Construction Manager's and Owner's choosing, and pay all of the expenses of such defense, whether or not Contractor is obligated to indemnify Construction Manager or Owner under the provisions of Article 6 hereof.

11.7 The Contractor shall carry on Contractor's Work and maintain its progress during any mediation or litigation .

11.8 Notwithstanding any other provision, for any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

Arbitration pursuant to Section 9.3 of this Agreement when the amount in dispute is less than \$100,000.

Litigation in a court of competent jurisdiction when the amount is more than \$100,000.

11.9 Arbitration

11.9.1 All claims, disputes and other matters in questions valued less than One Hundred Thousand Dollars (\$100,000) between the Construction Manager and Owner arising out of, or relating to, agreements to which the parties are bound, or the contract documents or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force, as modified herein, unless the parties mutually agree otherwise. The Architect, Contractors, subcontractors and material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11.9.2 Notice of the demand for arbitration shall be filed in writing with the other party to the arbitration and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in questions would be barred by the applicable statute of limitations.

11.9.3 All parties shall carry on the work and perform their duties during any arbitration proceedings, and the Owner shall continue to make payments as required by agreements and the contract document. However, at the request of any party, contested payments may be placed in an escrow account pending resolution of the dispute.

Article 12

PREVAILING LAW

12.1 This Agreement shall be governed by the laws of the State of Illinois.

Article 13

INVALID PROVISION

13.1 If any provision of this Agreement or the application thereof to any parties hereunder or any other persons shall to any extent be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or the application of such provision to the

parties or such persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Article 14

DEFINITIONS

14.1 As used throughout this Agreement, the following terms and expressions have the meanings and interpretation set forth below.

- **"Agreement"** and **"Contract"** mean this written Trade Contract executed between Construction Manager and Contractor.
- **"Construction Manager"** means the entity identified as such on the face page of this Agreement.
- **"Contractor"** means the entity identified as such on the face page of this Agreement.
- **"Detail Schedule"** refers to the weekly look-ahead schedule providing greater detail to the work to be performed in the Project Schedule.
- **"Estimate"** refers to the Contractor's estimate of Work completed to date, as submitted monthly to the Construction Manager for review and approval.
- **"Exhibit"** refers to additional requirements as attached to this Agreement.
- **"Final Acceptance"** refers to the Owner's complete and final acceptance of the Project as a whole.
- **"Final Payment"** refers to the payment based on the Contractor's final Estimate, including only the sum of the reserved balance from previous payments.
- **"Owner"** refers to the entity identified as Owner on the face page of this Agreement.
- **"Project Schedule"** means the overall schedule identifying all scopes of work for the entire Project, including the Work provided by Contractor.
- **"Site", "Worksite"** and/or **"Jobsite"** refer to Owner's premises.
- **"Contractor"** means the entity identified as such on the face page of this Agreement.
- The **"Work"** shall mean all services, labor, material, equipment and actions necessary for the

Contractor's performance of this Agreement. In certain context, the Work may also include the entire completed construction or the various separately identifiable parts thereof required to be performed or furnished in accordance with this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

«CONTRACTOR_NAME»

ATTEST:

_____ By _____ Date _____
Printed Name: _____
Title: _____

**POETTKER CONSTRUCTION COMPANY,
CONSTRUCTION MANAGER**

ATTEST:

_____ By _____ Date _____
Printed Name: _____
Title: _____

ASSIGNMENT AND ASSUMPTION OF SUBCONTRACT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF SUBCONTRACT CONTRACT (the “Assignment”) is executed effective as of [MONTH] _____, 2022 (the “Effective Date”) by and among **POETTKER CONSTRUCTION COMPANY**, an Illinois corporation (as “Assignee”) and **BOARD OF EDUCATION, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8** (as “Assignor”), and [_____, a(n) _____ corporation] (as “Subcontractor”).

INTRODUCTORY PROVISIONS

The following introductory provisions are the basis for and are incorporated into and made a part of this Assignment by this reference:

A. Assignor and Assignee have entered into that certain modified form of AIA Document A134-2009, dated [MONTH] _____, 2021, as amended from time to time (the “CM Agreement”) for certain construction management services in connection with the **New Elementary School** project as described in further detail therein.

B. Assignor, as required by the Illinois School Code, publically bid the Trade Contract (hereinafter referred to as the “Subcontract Agreement”) for the provision of the services, labor, equipment, tools, supplies and materials as further described in the Subcontract Agreement, a true and exact copy of which, along with any amendments and/or modifications, marked as Exhibit A, is attached hereto and incorporated herein by this reference.

C. The CM Agreement, bid documents/specifications, and Subcontract Agreement provide that the assignment of the Subcontract Agreement by the Assignor to the Assignee will occur contemporaneously with or after Assignor awards the Subcontract Agreement to Subcontractor.

D. Assignor, Assignee and Subcontractor desire to effectuate and memorialize the Assignment.

E. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such term in the Subcontract Agreement.

ASSIGNMENT AND ASSUMPTION

1. Assignor hereby transfers, pledges, and assigns all of its right, title, and interest in and to the Subcontract Agreement, and all rights, powers, interests, privileges, proceeds, income, profits, claims, warranties, and remedies under the Subcontract Agreement, to Assignee.

2. Assignee hereby accepts the assignment herein made and hereby assumes all obligations of Assignor as ‘Owner’ (other than Owner’s payment obligations to Construction Manager), and as the Construction Manager as set forth and referenced in in the Subcontract Agreement arising from and after the Effective Date.

3. Assignee hereby assumes all rights, duties and obligations imposed upon the “Owner” (other than Owner’s payment obligation to Construction Manager) and Construction Manager as set forth in the Subcontract Agreement, arising from and after the date of this Agreement and agrees to

perform and satisfy all of the rights, duties and obligations of Assignor thereunder arising from and after the date of this Agreement. Assignee assumes no obligation for any losses, claims, lawsuits or damages of any kind arising in connection with the Subcontract Agreement prior to the date of this Agreement or any violations of the Subcontract Agreement or obligations incurred or arising thereunder prior to the date of this Agreement. Assignee's assumption of obligations set forth herein is subject to all exculpatory or similar provisions, if any, contained in the Subcontract Agreement which limit the liability of the Assignor thereunder. Assignee, however, acknowledges that it is obligated to comply with the provisions of its CM Agreement with Assignor.

4. Assignor is a Board of Education, organized and existing under the laws of the State of Illinois, has the power to enter into this Agreement and to perform its obligations contained herein and, by proper action, has been duly authorized to execute and deliver this Agreement.

5. Assignor and Subcontractor acknowledge and agree that Assignee does not assume any of Assignor's obligations or duties under the Subcontract Agreement which have arisen or are attributable to the period prior to the Effective Date.

6. Assignor represents and warrants to Assignee that a true and correct copy of the Subcontract Agreement and all change orders related thereto, if any, as of the date of this Assignment, are attached hereto as **Exhibit "A"** and that, as of the Effective Date, Assignor's interest in the Subcontract Agreement is not subject to any claims, setoff, or encumbrance.

7. Assignor represents and warrants to Assignee that Assignor has not made any previous assignments of its rights under the Subcontract Agreement.

8. Assignor agrees to indemnify, defend, and hold Assignee harmless against and from any loss, damages, cost, liability, lien, expense, and disbursements (including, but not limited to, reasonable attorneys' fees) arising out of, relating to, or resulting from this Assignment, and/or Assignor's obligations under the Subcontract Agreement (the "**Claims**"); provided, however that such indemnity extends only to those Claims made under the Subcontract Agreement which are caused by Assignor or are otherwise attributable to Assignor, and which arise or are attributable to the period prior to the Effective Date.

9. This Assignment is binding upon and inures to the benefit of Assignee and Assignor and their respective successors, and assigns.

10. For work performed prior to the Effective Date, Assignor shall cause Subcontractor to provide: (i) such affidavit or certification to Assignee that all amounts due and owing as part of the Contract Sum under the Subcontract Agreement have been paid by or on behalf of Assignor to Subcontractor; and (ii) a mechanic's lien waiver to date for such amounts and scope of Subcontractor's Work performed under the Subcontract Agreement reasonably acceptable to Assignee.

11. For work performed prior to the Effective Date, Assignor shall provide such affidavit or certification to Assignee that all amounts due and owing as part of the Contract Sum under the Subcontract Agreement have been paid to or as otherwise directed by Subcontractor.

12. Assignor and Subcontractor acknowledge and agree that as of the Effective Date, Subcontractor has been paid the amount of [\$0] (which amount includes [\$0] retainage) under the Subcontract Agreement.

SUBCONTRACTOR'S CONSENT

As required to be awarded the Subcontract Agreement and as required by the Subcontract Agreement and the Contract Documents, Subcontractor represents and warrants to, consents to, and agrees as follows:

1. Attached to this Assignment as Exhibit "A" is a true and correct copy of the Subcontract Agreement, and all change orders and amendments thereto, if any. As of the Effective Date, the interest of Assignor in and under the Subcontract Agreement is not subject to any claim, setoff, or encumbrance. Subcontractor consents to Assignor's assignment of the Subcontract Agreement to Assignee. Upon and after the Effective Date of this Assignment, the Subcontractor binds itself to the Assignee for the performance of Subcontractor's Work in the same manner as the Assignee is bound to Assignor for such performance under the CM Agreement with the Assignor. The pertinent parts of the CM Agreement between Construction Manager and Owner will be made available to Subcontractor upon its request.
2. Subcontractor acknowledges that Assignee is beneficiary of the warranties set forth in the Subcontract Agreement, and Assignee has the right to enforce the warranties and to cause corrective work to be done by Subcontractor.
3. The indemnities in favor of the Assignor under the Subcontract Agreement are hereby expressly assigned to Assignee as an indemnitee to the extent not already named as an indemnitee.
4. To the extent not already performed, Subcontractor shall add Assignee as an additional insured under the insurance policies required by the Subcontract Agreement and Subcontractor shall provide copies of such policies to Assignee upon request.

MISCELLANEOUS

1. **No Waiver.** No failure on Assignor or Assignee's part, or any of their respective agents, to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Assignor, Assignee or any of their respective agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
2. **Governing Law.** This Assignment and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its principles of conflicts of law. Any litigation between two or all of the parties hereto arising out of the interpretation and/or enforcement of this Assignment shall be venued in the Circuit Court of Christian County, Illinois notwithstanding any principles of law to the contrary.

3. **Severability.** If any provision hereof held to be in invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (i) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible, and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

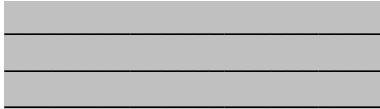
4. **Remedies Cumulative.** All rights and remedies set forth in this Assignment are cumulative, and Assignor and Assignor may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. No such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to Assignor or Assignee in the CM Agreement or Subcontract Agreement. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of Assignee under the CM Agreement or Subcontract Agreement.

5. **Amendments.** This Assignment may not be amended, waived or discharged except by an instrument in writing duly executed by Assignor and Assignee.

6. **Notices.** All notices, requests and other communications provided for herein shall be given or made in writing via email or overnight hand-delivery to:

If to Assignor: Board of Education, Pana Community Unit School District
No. 1
14 W. Main St.
Pana, IL 62557

If to Assignee: Poettker Construction Company
400 S. Germantown Road
Breese, Illinois 62230

If to Subcontractor: 

7. **Section Headings.** The section headings used in this Assignment are for convenience of reference only and do not constitute a part of this Assignment for any purpose.

8. **Counterparts.** This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any party hereto may execute this Assignment by signing any such counterpart.

9. **Time of Essence.** Time is of the essence of this Assignment and of each and every term, covenant and condition herein.

10. **Effective Date.** For purposes of this Assignment, the “Effective Date” shall be the date upon which the last of the three parties hereto signs this Assignment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ASSIGNEE:

POETTKER CONSTRUCTION COMPANY,
an Illinois corporation.

By: _____
Full Name:
Title:
Date Signed: _____

ASSIGNOR:

**BOARD OF EDUCATION, RICHLAND COUNTY COMMUNITY UNIT SCHOOL
DISTRICT NO. 1**

By: _____
Full Name:
Title: President of the Board of Education
Date Signed: _____

Attest:

By: _____
Full Name:
Title: Secretary of the Board of Education
Date Signed: _____

SUBCONTRACTOR:

[SUBCONTRACTOR COMPANY NAME],
a(n) _____ corporation.

By: _____
Full Name: _____
Title: _____
Date Signed: _____

EXHIBIT "A"
Subcontract Agreement

(see attached)

General Conditions Matrix

Pana CUSD #8

Company Name: Poettker Construction Company

9/12/2021

Item	Included in General Conditions	Included in Precon fee	Included in CM Fee	Provided by Owner	Bid Package/Trades
Administrative/accounting/clerical-jobsite based Groundbreaking Expenses			X		
Administrative/accounting/clerical-office based Home Office Administrative Support Accounting/Financial Management			X X		
Bidding Electronic Distribution of Bidding Documents Bid Advertisement & Solicitation		X X			
Building permits & inspection fees				X	
Change order administration			X		
Close-out documents As-built document creation & reproduction Operation and Maintenance Manuals			X X		X X
Construction cleanup Final cleaning					X
Dumpster, trash hauling & landfill charges					X
Hoisting Expenses					X
Insurance-Builder's Risk				X	
Insurance and Bonds Performance & Payment Bond General Liability Workers Compensation			X X		X X X
IT equipment & services-jobsite based High Speed Internet Connection	X				
IT equipment & services-office based					
Jobsite drinking water			X		X
Jobsite fire prevention requirements Fire Extinguishers					X
Jobsite supervisory personnel Job Superintendent	X				
Jobsite mobilization			X		
Jobsite security	X				
Jobsite snow removal					X
Jobsite toilets					X
Jobsite - trash chutes					X
Legal fees			X	X	
Miscellaneous materials pickup & delivery					X
Office equipment-jobsite based	X				
Office equipment-office based Software for budgeting, scheduling, PM, and Accounting			X		
Office supplies-jobsite based					
Office supplies-office based					
Office-based estimating services		X	X		
Office-based scheduling services		X	X		
Office-based project bidding services Bid Solicitation and Administration		X			
Office (home) - Building Rent			X		
Offsite storage					X
Postage, courier & delivery charges	X				
Pre-construction estimating services SD, DD, 50% CD, 95% CD		X			
Pre-construction scheduling services		X			
Pre-construction planning services Constructability Review		X			
Pre-construction value engineering		X			
Printing Construction Documents (plans and specs) Miscellaneous drawing reproduction	X X				
Project accounting services-office based		X	X		
Project management services Project Manager Project Executive Project Engineer	X		X X		

General Conditions Matrix

Pana CUSD #8

Company Name: Poettker Construction Company

9/12/2021

Item	Included in General Conditions	Included in Precon fee	Included in CM Fee	Provided by Owner	Bid Package/Trades
Project quality control measures			X		
Progress photography			X		
Project signs					
Project Sign	X				
Temporary construction signage					X
Safety program					
Personal Protective Equipment	X				X
First Aid Supplies	X				X
Safety Audit			X		
Rails, opening protection					X
Small tools & equipment					X
Survey, layout & staking				X	X
Temporary fencing and barricades					X
Temporary partitions					X
Temporary stairs					X
Temporary weather enclosures					X
Temporary jobsite telephone					
Cell phones	X				
Land/fax lines					
Temporary offices	X				
Temporary utilities - electric					
Service Fees (power company)				X	
Temporary electric service installation					X
Consumables				X	
Temporary utilities - water					
Service Fees (City)				X	
Temporary water service installation					X
Consumables				X	
Temporary utilities - Heating/Vent					
Equipment					X
Consumables				X	
Installation					X
Testing & Inspections					
Testing lab services				X	
Trailers					
Tool					X
Storage					X
Traffic control					
On site					X
Off site					X
All travel expenses associated with Project					
Superintendent	X				
Project Manager	X				
Project Executive			X		
Project Engineer	X				
Other G.C. Costs					



Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Construction of an Elementary Attendance Center, as well as demolition of Lincoln Elementary and Washington Elementary Schools; for Pana CUSD#8 as identified in the Schematic Design, attached hereto and incorporated herein as Exhibit C.

THE OWNER:

(Name, legal status and address)

**Board of Education, Pana Community Unit School District No. 8
14 W. Main Street
Pana, Illinois 62557**

THE ARCHITECT:

(Name, legal status and address)

**BLDD Architects, Inc.
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ADDITIONS AND DELETIONS:

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

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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, General Conditions of the Contract, Drawings, Specifications, Project Manual, Addenda issued prior to execution of the Contract and 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, or (2) a Change Order. Contract Documents shall also include: Advertisements or Invitations to Bid, Instructions to Bidders, Bid Forms, the Bid or Proposal executed by the Bidder, Addenda, Certificates of Insurance, and bonds included in the Project Manual, including, but not limited to Bid Bonds, Performance Bonds, and Labor and Material Payment Bonds.

Pursuant to Subparagraph 1.1.1, enumeration of Drawings, Project Manual and Addenda is as follows:

A. ADDENDA: Contract Documents will include such Addenda as may be issued during the bidding period and acknowledged in the Proposal forms.

B. PROJECT MANUAL: Refer to "Table of Contents – Bidding Requirements and Contract Documents bound hereinbefore.

§ 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.

§ 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.

§ 1.2 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 as being necessary to produce the indicated results.

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

§ 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 Unless otherwise established pursuant to a separate agreement, 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor may retain one record set. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.5.3 The Drawings, Specifications and other documents, including those in electronic form, if any, prepared by any design professionals retained by Contractor and furnished by the Contractor are Instruments of Service (the "Contractor's Instruments of Service"). The Contractor and its subcontracting providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Service furnished by them. Drawings, specifications and other documents and materials and electronic data are furnished for use solely with respect to this Project.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project including: structural or mechanical systems; chemical, air and water pollution; hazardous materials; geotechnical conditions; or other environmental, subsurface or concealed conditions. The Owner shall disclose all information known to the Owner regarding the presence of hazardous materials, pollutants or contaminants at the Project's site.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Work is defective, or Contractor fails to carry out Work in accordance with the Contract Documents, or Contractor repeatedly fails to correct Work that is not in accordance with the requirements of the Contract Documents as provided by Section 12.2, or Contractor fails to make prompt payments to Subcontractors or for labor, materials or equipment, Owner may order Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party. Any such stoppage of Work will not extend the Final Completion Date or otherwise give Contractor cause to request an extension of time as to any milestone or an increase of the Contract Sum. The rights stated in this provision are not a limitation of any rights of the Owner expressed in the Contract Documents or as provided by law or equity.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a commercially reasonable period (not to exceed twenty-one (21) days) after receipt of written notice from the Owner to commence and continue correction of such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's reasonable and substantiated out of pocket expenses made necessary by such default, neglect or failure, if any. Such action by the Owner and amounts charged to the Contractor are both subject to the prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 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 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 The Contractor represents that it has visited the Project site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 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 (collectively, "Codes"), but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 Contractor, in the performance of the Work, will be an independent contractor, and will furnish all workers, tools and equipment necessary to perform the Work. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention and give it all attention necessary for proper supervision and direction. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All applicable warranties related to the Work, whether pursuant to this Section, the other provisions of the Contract Documents or applicable law, shall commence as of the date of Substantial Completion of the Work, and shall terminate and expire one (1) year after Substantial Completion of the Work, except for third party warranties expressly provided in the Contract Documents or any other written warranty given to Owner at the end of the Project. **THE CONTRACTOR HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY WARRANTED HEREIN.** All Subcontractor's and manufacturer's warranties shall be deemed furnished and assigned to the Owner pursuant to the Contract Documents without further action by the Contractor upon Final Payment by the Owner as required under the Contract Documents.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 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 and negotiations are concluded.

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

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

§ 3.7.4 Concealed or Unknown Conditions.

If the Contractor or Owner encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, (2) contrary to those conditions indicated by documents, reports, or other data provided by Owner, or (3) 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 observing party shall promptly provide notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions. If the conditions encountered cause a delay in the timely completion or performance of the Work, then the Contract Sum and Contract Time shall be equitably adjusted. In the event that the Owner and the Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, or both, the Contractor may proceed 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 the work to be performed under the Allowance;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2 and

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's approval a construction schedule for the Work indicating the starting and completion dates of the various stages of the Work as consistent with any other scheduling requirements set forth in the Agreement. The schedule shall not, subject to applicable Change Orders, exceed the time limits or otherwise modify any milestone completion dates specified in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current a schedule of submittals required by the Contract Documents.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections

made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These may be maintained at the jobsite in either electronic or hard copy shall be delivered to the Owner upon completion of the Work in one of these formats acceptable to Owner.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner that the Contractor has (1) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (2) has 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 in writing by the Architect.

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

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

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

of the services, certifications and approvals performed or provided by such design professionals, provided the Architect has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project and Contractor will leave the site clean and ready for occupancy by Owner. Contractor will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may provide Contractor written notice of such failure, and provided Contractor has not commenced clean up within seventy-two (72) hours after receipt of such notice, then Owner shall be entitled to do so and obtain reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its employees from and against third-party claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work and to the extent caused by tortious or negligent acts or omissions of the Contractor or a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable (hereinafter a "Contractor Party"), provided that such third-party claim, damage loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself). Nothing in this Subparagraph 3.18.1 shall require the Contractor to indemnify a party indemnified hereunder for such party's own negligence, recklessness or intentional misconduct beyond that

proportion of the claim, damage, loss or expense attributable to the contributory or comparative fault of the Contractor or a Contractor Party.

§ 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

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. The Architect is the person or persons 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. The term "Architect" means the Architect or the Architect's authorized representative.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect. The Owner shall provide notice of any termination of Architect and Owner shall seek input from Contractor prior to Owner selecting or engaging any new Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract and act as the Owner's representative during construction to the extent authorized by the Owner. The Architect will have authority to act on behalf of the Owner only to the extent authorized by the Owner. The Owner will advise the Contractor as to the scope of the Architect's authority, and upon written request from the Contractor, shall confirm same in writing to the Contractor.

§ 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, except as provided in Section 3.3.1.

§ 4.2.3 Intentionally omitted.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.

§ 4.2.5 If requested by the Owner, the Architect will review the Contractor's Applications for Payment and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 If authorized by the Owner, the Architect shall have 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 If requested by the Owner, the Architect will prepare Change Orders, and will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 If requested by the Owner, the Architect will conduct inspections to assist in determining the date or dates of Substantial Completion and the date of final completion, and otherwise assist the Owner with the Owner's review of records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10, and with any reviews associated with Final Completion.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 Upon request of the Owner, the Architect will interpret matters concerning the requirements of 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.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of 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.

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

§ 4.2.14 To the extent authorized by the Owner, 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. All requests for information shall be submitted to the Architect in a format reasonably acceptable to the Architect.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each

principal portion of the Work. The Owner will within five (5) days reply to the Contractor in writing stating whether or not the Owner has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within such time shall constitute notice of no reasonable objection. Notwithstanding anything herein to the contrary, the Owner hereby agrees that the Contractor may contract portions of the Work to the Contractor or divisions of the Contractor pursuant to a contractual agreement, and the contract sum thereof shall constitute a portion of the Contract Sum.

§ 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 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 within five (5) days' receipt of a written objection from Owner in submitting names as required hereunder.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect.

Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to those contained in the Contract Documents, including those portions related to insurance and waiver of subrogation. The Contractor shall use reasonable efforts to cooperate with the Owner and Separate Contractors whose work might interfere with the Contractor's Work. If the Contractor claims that delay or additional cost is involved because of such action by the Owner or the Owner's Separate Contractors, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 The term "Separate Contractor" shall mean any contractor retained by the Owner pursuant to Section 6.1.1.

§ 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 reasonably cooperate with them. The Contractor shall participate with other Separate Contractors and the Owner in reviewing their construction schedules when directed to do so by the Owner. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or pursuant to separate contracts with Separate Contractors, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12. Without limiting the generality of the foregoing, if the Owner awards separate contracts with any other contractors for any work at the Project site during the performance of the Work, then the Owner shall cause each and every such other Separate Contractor (and their subcontractors of any tier) to name the Contractor as an additional insured on all liability insurance policies maintained by such Separate Contractor (and their subcontractors of any tier) to the extent such policies cover liabilities relating to the Project or other work being performed at the Project site. The Owner shall furnish to the Contractor written evidence that such insurance is in effect and that the Contractor has been named an additional insured as aforesaid upon the first to occur of the award or execution of any such separate contract.

§ 6.1.5 All labor used for performance of any construction or operations related to the Project with Separate Contractors or the Owner's own forces throughout the term of this Agreement shall (i) be acceptable to the Contractor, (ii) be of a standing or affiliation that will permit the Work to be carried on harmoniously and without delay, and (iii) not in any event or under any circumstances cause any disturbance or delay to the commencement or progress of the Work being carried on by the Contractor or any Subcontractor. In the event of a strike or Work stoppage or slowdown resulting from a labor dispute caused by Owner's use of Separate Contractors or the Owner's own forces not in accordance with this paragraph, the Contractor shall be entitled to an equitable adjustment to the Contract Time and the Contract Sum to the extent Contractor incurs additional costs or is delayed as a result of such strike, stoppage of work or slowdown of work. The Owner shall not employ any labor of a different union status from Contractor prior to Substantial Completion without the Contractor's prior written approval. If such approval is granted, Contractor may require all of the Owner's Separate Contractors and Owner's own forces to comply with any two-gate system or other procedures designed to facilitate the Work. Owner agrees that all its Separate Contractors and Owner's own forces shall be contractually bound to observe the terms of any collective bargaining agreements to the same extent as is may be required of Contractor, and that an express provision imposing such obligation shall be included in all Owner's subcontracts.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the

Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

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, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Under no circumstances shall any change in the Work be authorized or performed except as expressly provided for in accordance with this Article 7.

§ 7.1.2 A Change Order shall be based upon written agreement between the Owner and Contractor.

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

§ 7.1.4 If (a) the Owner requests a change in the Work, (b) the Contractor requests a change in the Work, or (c) the Contractor otherwise is entitled to a Change Order as provided in the Contract Documents, then the Contractor shall have the right to submit to the Owner a written change order request (a "COR"), which shall set forth such change to the Contract Documents as the Contractor shall desire or deem appropriate. Such COR shall be in writing and shall set forth the Contractor's determination of the appropriate changes, if any, to (as may be applicable) (i) the Cost of the Work, (ii) the Contractor's Fee, (iii) the Contract Sum, (iv) the schedule of values, (v) the Substantial Completion Date, or (vi) any other provisions of the Contract Documents. Each COR shall constitute an offer by the Contractor to amend the Contract Documents. If the Owner accepts such offer in writing and without revision, then such offer and acceptance, together, shall constitute a "Change Order" which shall operate to amend the Contract Documents. If the Owner accepts such offer subject to revisions not previously agreed to by the Contractor in writing, then such "acceptance" shall constitute a counteroffer by the Owner to the Contractor which the Contractor may either accept in writing or reject. If the Contractor accepts such counteroffer in writing, the same shall constitute a Change Order. The Contractor shall have no obligation to perform any changes in the Work except pursuant to a Change Order made as provided herein.

§ 7.1.5 With regard to any extra work for which Contractor is or would otherwise be entitled to a Change Order under the terms of the Contract Documents, in addition to Contractor's actual costs associated with the extra work, Contractor shall be paid (a) an amount equal to the actual costs for Contractor's General Conditions related to such additional work, and (b) an amount equal to [ten percent (10%)] of the actual costs on any extra work (including General Conditions and Insurance) for Contractor's Fee.

§ 7.2 CHANGE ORDERS

§ 7.2.1 If the other provisions of the Contract Documents require that a Change Order be issued and the Owner and the Contractor are unable to agree on the terms thereof as provided in the Agreement within ten (10) days of a written demand given by either party to the other party to so agree, then the dispute shall be resolved as provided in Section 15 herein. In any such dispute resolution proceedings the parties agree that the following terms of the Change Order shall be determined:

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

§ 7.2.2 If the Owner requests a proposal for a change in the Work from the Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Contractor for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

§ 7.2.3 If or when (i) the total construction cost of the Project exceeds \$21,000,000, or (ii) the total Project cost exceeds \$25,000,000, and thereafter, the Construction Manager shall be entitled to a Change Order providing for an equitable adjustment in the Contract Time and Contractor's Fee for increased general conditions costs and overhead and profit on the Cost of the Work added by Change Order or otherwise.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 Intentionally omitted

§ 7.3.2 Intentionally omitted

§ 7.3.3 Intentionally omitted

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

§ 7.3.5 Intentionally omitted

§ 7.3.6 Intentionally omitted

§ 7.3.7 In any dispute between the Contractor and the Owner over the method for adjustment in the Contract Sum in connection with any Change Order or in connection with any other adjustment in the Contract Sum to which the Contractor is entitled under the Contract Documents, then the method and the adjustment shall be determined 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, a reasonable amount for overhead and profit. In such case, the Contractor shall keep and present a reasonably itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

§ 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. When both additions and credits covering related Work or substitutions are involved in a change, the increase in the Contractor's Fee 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 Change Order, amounts not in dispute for such Changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs and the Owner shall be obligated to pay such costs together with the Contractor's Fee thereon.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect or Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be memorialized by preparation and execution of an appropriate Change Order.

§ 7.4 INTENTIONALLY OMITTED

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, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 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 an act or neglect of the Owner or of an employee, consultant or Separate Contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries; the imposition of quotas or other restrictions on the ability of the Contractor to obtain material or equipment, unavoidable casualties or other causes beyond the Contractor's control; adverse weather conditions or adverse site conditions caused by adverse weather which prevent construction activities of the type then scheduled, delays caused by governmental authorities (not caused as a result of fault on the part of the Contractor); or by delay authorized by the Owner pending dispute resolution pursuant to the Contract Documents, or by other causes that the Owner determines may justify delay (each, an "Excusable Delay"), then the Contract Time shall be extended by Change Order for a reasonable time and the Contract Sum shall be adjusted to the extent reasonably necessary to compensate the Contractor for any increase in the Cost of the Work caused by such delay.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner, before the first Application for Payment, an initial schedule of values allocating the entire Contract Sum to

the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1, The Contractor shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The Application shall be notarized, if required, and supported by data substantiating the Contractor's right to payment as the Owner may reasonably require, such as copies of requisitions from the Architect, Consultants, Subcontractors, and material suppliers, and shall reflect retainage, if any, provided for in the Contract Documents.

Owner acknowledges having been hereby advised that the Contractor and its Subcontractors may utilize software to assist in preparing and submitting Applications for Payment, a feature of which provides the capability of placing electronic signatures on Applications for Payment. Notwithstanding anything to the contrary in the Contract Documents, and pursuant to 15 U.S.C. § 7001(a), the Owner hereby agrees that any Application for Payment bearing an electronic signature of a duly authorized officer of the Contractor or any Subcontractor shall have the same legal effect as an Application for Payment bearing an ink-signed signature manually placed thereon by a duly authorized officer of the Contractor or a Subcontractor, as the case may be.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders. Retainage shall be paid to Contractor and its subcontractors as provided for in the Agreement, and as may further be provided for and required by applicable Law.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, such approval not to be unreasonably withheld, delayed or conditioned. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment, free and clear of all liens, claims, security interests and encumbrances (other than those resulting directly from Owner's action or inaction).

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Owner shall, within thirty (30) days after receipt of the Contractor's Application for Payment, pay the amount of such Application for Payment to the Contractor. Should Owner take exception to all or portions of the Contractor's Application for Payment, Owner shall notify Contractor in writing of the Owner's reasons for withholding payment in whole or in part as provided in Section 9.5.1. Such notification from Owner shall take place within seven (7) days of receipt by Owner of the Contractor's Application for Payment. The determination that a limited portion of a pay application is inappropriate shall in no way excuse the Owner from making timely payment of the portion of the pay application that is not deemed to be inappropriate.

§ 9.4.2 The making of a Payment will constitute a representation by the Owner that the Work has progressed to the point indicated and that, to the Owner's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. The making of a Payment will further constitute a representation that the Contractor is entitled to payment in the amount requested in the Application for Payment.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 If the Owner withholds a payment of all or any portion of an Application for Payment, then the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly pay the amount which is not in dispute. The Owner may withhold a 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 reasonably necessary to protect the Owner from loss for which the Contractor is responsible, resulting from acts and omissions because of the following:

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

§ 9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. Notwithstanding anything to the contrary in the foregoing, if the Contractor provides the Owner with a lien bond sufficient to cover mechanics' liens filed by the Contractor or any Subcontractor, the Owner shall not withhold payment as set forth in Section 9.5.1 herein. The Contractor will diligently pursue the removal of any lien filed by a Subcontractor (unless in the reasonable determination of the Contractor, the ultimate obligation for the Claim filed by the Subcontractor lies with the Owner), and, regardless of whether a lien bond is provided as set forth above, during such time the Owner shall not satisfy or pay off the lien or otherwise settle or compromise the Subcontractor's claim; provided, however, that promptly after a final, non-appealable judgment is rendered directing that the property be sold to satisfy the lien, and in any event prior to the date of such sale, the Contractor will satisfy the lien and pay the Subcontractor all amounts owing.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, after 48-hours advance written notice to the Contractor, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Prior to or contemporaneously with issuance of the 48-hour advance written notice to the Contractor, the Owner shall use commercially reasonable efforts to discuss with the Contractor the amounts applicable to joint checks intended to be issued.

§ 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of each such Subcontractor's respective portion of the Work, the amount to which each such Subcontractor is entitled.

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

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

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

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

§ 9.6.7 Intentionally omitted.

§9.6.8 The Owner may withhold five percent (5%) from the periodic Progress Payments to the Contractor as retainage; provided, however, that no retainage shall be withheld on Construction Manager's Fee, including payments for Preconstruction services.

§ 9.7 FAILURE OF PAYMENT

If the Owner does not issue a Payment on an Application for Payment within the time period required by the Agreement, or if the Owner withholds payment pursuant to Section 9.5.1 without a reasonable basis (or in amounts that are not justified by a reasonable basis), or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any other amount due to the Contractor hereunder or awarded in any dispute resolution, then the Contractor may stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. This right to stop work for non-payment is an agreed upon exception to the Contractor's general agreement not to stop work during the dispute resolution process.

§ 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. For purposes of clarification, it is understood that Substantial Completion means the applicable portion of the Work is suitable for occupancy, but closeout tasks may be ongoing. Regarding closeout tasks, there will be testing, balancing and commissioning of equipment as well as trade punch list work overlapping with Owner move-in but Contractor will take reasonable precautions to prevent or limit overlapping closeout items from impeding Owner move-in and start-up operations.

§ 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 Owner 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 Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner'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 Owner. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine Substantial Completion.

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, whether or not the portion is substantially complete provided that Owner does not materially interfere with the Contractor's ability to complete the Work.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Work has been finally completed in accordance with the Contract Documents and fully performed, the Owner shall, subject to Section 9.10.2, promptly make final payment of all amounts due and owing to the Contractor under the Contract Documents.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), the Contractor's final waiver in the full amount of its contract plus any adjustments made by change orders, etc., and final Waivers of Lien from Subcontractors and Suppliers in the full amount of their subcontractors plus any Adjustments, Bonds, Guarantees, etc., as required by the Specifications.

§ 9.10.3 If, after Substantial Completion of the Work or a designated portion thereof, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor. 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 accounting errors or

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

§ 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

Contractor shall promptly report in writing to the Owner and the Architect all accidents arising out of, or in connection with, the Work that cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone to the Owner and the Architect.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall (a) obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor, and (b) 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 the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor will promptly reply to the Owner in writing stating whether or not it has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has 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 in the amount of the Contractor's reasonable additional costs of shut -down, 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), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

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

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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 indemnify 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 LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.2.1 Workers' Compensation (Voluntary Compensation by any exempt entities) required by Section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- .1 State and applicable Federal statutory;
- .2 Employer's Liability:
 - \$1,000,000 per Accident
 - \$1,000,000 Disease, Policy Limit
 - \$1,000,000 Disease, Each Employee

§ 11.1.2.2 Commercial General Liability required by Section 11.1.1 shall be written for not less than the following limits:

- .1 Combined Single Limit Bodily Injury & Property Damage:
 - \$2,000,000 per occurrence
 - \$2,000,000 aggregate
- .2 Products and Completed Operations Insurance shall be maintained for a minimum period of 2 years after final payment and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.

§ 11.1.2.3 Business Auto Liability (including owned, non-owned and hired vehicles) required by Section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- .1 Combined Single Limit Bodily Injury and Property Damage:
 - \$1,000,000 per accident

§ 11.1.2.4 Umbrella Excess Liability required by Section 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- \$5,000,000.00 over primary insurance

§ 11.1.3 Certificates of insurance reasonably acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with Contractor's information and belief.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include "The Board of Education of Richland County Community Unit School District No. 1" as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's and/or Subcontractor's operations; and (2) "The Board of Education of Richland County Community Unit School District No. 1" as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

This insurance shall include interests of the Owner, the Contractor and Subcontractors in the Project. Contractor shall have the right (but not the obligation), upon written notice given to the Owner, to terminate such insurance coverage upon Substantial Completion, or any time thereafter. If the Contractor terminates such coverage, the Contractor shall have no liability to the Owner for any lapse in property insurance coverage, it being agreed that the Owner shall be solely responsible for obtaining and maintaining property insurance covering the subject property from and after Substantial Completion. Owner shall procure property insurance covering the subject property from and after Substantial Completion.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner, Architect, and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.4 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

§ 11.3.4 Intentionally omitted.

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

§ 11.3.6 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, Separate Contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, even though such damages may have been occasioned by the negligence of the person or entity in whose favor this waiver is made, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Separate Contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall

provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.7 WAIVERS OF SUBROGATION

§ 11.3.8 A loss insured under Contractor's property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the Contractor shall not make any settlement with respect to such loss until a resolution has been reached by agreement between such parties in interest and the insurers or by a court of competent jurisdiction.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Notwithstanding anything to the contrary in this Agreement or the Contract Documents, except for tradework which Poettker Construction Company may self-perform pursuant to a subcontract, Construction Manager shall not be required to procure payment or performance bonds.

§ 11.4.2 For all trade subcontracts, the following is required:

§ 11.4.2.1 Within ten (10) days of the execution of the Contract, the Contractor shall furnish a Performance Bond and a Payment Bond. The Performance bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of its Contract Sum as security for the faithful performance of the Contract Documents, and the Payment Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bonds shall be in a form and with a surety acceptable to the Owner and shall not include limitation period shorter than that provided by Illinois law. The bonds shall name the Owner as Primary Co-Obligee.

§ 11.4.2.2 The Performance Bond and the Labor and Material Payment Bond shall guarantee the performance of the duties placed on the Contractor pursuant to the contract with the Owner, and shall indemnify the Owner from any liability or loss resulting to the Owner from any failure of the Contractor fully to perform each or all of said duties. The Performance Bond and the Payment Bond shall be deemed to cover all such duties.

§ 11.4.2.3 The Performance Bond and the Payment Bond herein shall be placed with a surety company or companies having a policyholders' rating not lower than "A-" as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency.

§ 11.4.2.4 All bonds shall include a specific obligation of the Surety to guarantee the faithful performance of the Contractor under the Illinois Prevailing Wage Law.

§ 11.4.2.5 The bonds shall comply with the Public Construction Bond Act, 30 ILCS 550/1. Each such bond is deemed to contain the following provisions whether such provisions are inserted in such bond or not: "The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract or contracts entered into between the principal and the State or any political subdivision thereof will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made."

§ 11.4.2.6 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the surety of the Contractor shall be responsible to make full payment to the Owner for any and all extra work and accounting and other expenses incurred by the Architect as a result of a Contractor's default and to pay the Owner all

attorney's fees in addition to paying testing, consulting, engineering, accounting and court costs incurred by Owner as a result of a Contractor's default and in protecting the Owner's right under the agreement with the Contractor to remedy the Contractor's default or honor the terms of the Performance Bond.

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 requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner, be uncovered for the Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner has not specifically requested to examine prior to its being covered, the Owner may provide the Contractor with written request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or after the date for commencement of warranties established under Section 3.5.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period shall be extended for correction of Work to a period ending one-year from the completion of such corrective Work, but such extension shall only apply to such corrective Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the 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 Owner may seek to enforce that obligation or any other obligation arising under the Contract Documents.

§ 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 equitably adjusted by Change Order. 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 State of Illinois without regard for conflict of law principles.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Contract shall be binding upon, and shall inure to the benefit of, the Owner and the Contractor and their respective successors and assigns. Neither party shall assign the Contract, in whole or in part, without the prior written consent of the other. For purposes of this Agreement, the term “successors” shall include any party to whom Owner transfers ownership of the Property to prior to Final Payment of the Contract Sum.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.4.3 The invalidity of any part or provision in the Contract shall not impair or affect in any manner the validity or enforceability of the remaining parts and provisions of the Contract.

§ 13.4.4 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor except as specifically provided herein.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor, as a Cost of the Work, and subject to ten percent (10%) markup, 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 Contractor shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner shall in writing 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 Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner’s expense.

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

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall be in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

§ 13.8 NON-HIRE COVENANT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, during the term of this Agreement and for a period of one (1) year after the later of the expiration or earlier termination of this Agreement or any other agreement entered into by and between Owner and the Contractor, (i) Owner, for itself, its partners, parent, affiliates and subsidiaries (collectively, "Owner Entities") covenants and agrees that none of the entities comprising the Owner Entities shall employ or hire (as an employee, or independent contractor, or otherwise), recruit, solicit, induce or attempt to induce any known employee or consultant of Contractor who has worked on the Project, to terminate his/her employment or consulting relationship with, or otherwise cease his/her relationship with any of the foregoing entities; and (ii) Contractor, for itself, its partners, parent, affiliates, subsidiaries and any entities in which the partners, officers, directors or owners of any such entities are employed or have an ownership or other interest (collectively, "Contractor Entities") covenants and agrees that none of the entities comprising the Contractor Entities shall employ or hire (as an employee, or independent contractor, or otherwise), recruit, solicit, induce or attempt to induce any known employee or consultant of Owner, to terminate his/her employment or consulting relationship with, or otherwise cease his/her relationship with any of the foregoing entities. The foregoing provision shall be known as the "Non-Hire Covenant" and shall survive the expiration or earlier termination of this Agreement for the time limit stated above.

§ 13.9 EMPLOYMENT

The Contractor agrees to fully comply with the requirement of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder. As required by Illinois law, in the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity provision, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

§ 13.9.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service; and agrees further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

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

§ 13.9.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.

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

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

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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to make payment to the Contractor in accordance with the Contract or failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages, including, without limitation, overhead and profit on the Work not executed.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with

the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon written notice to the Owner, 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of a substantial and material breach of a provision of the Contract Documents

§ 14.2.2 When any of the above reasons exist, the Owner, if sufficient cause exists to justify such action, shall, without prejudice to any other rights or remedies of the Owner provide the Contractor and the Contractor's surety, if any, written notice of the factual basis for the termination condition. Contractor shall (a) within twenty-one (21) days after delivery of the notice, remedy and correct the identified deficiency, or (b) if such deficiency cannot reasonably be corrected within twenty-one (21) days, commence to remedy and correct such deficiency within such twenty-one (21) day period and diligently prosecute the same to completion. If the Contractor fails to cure as provided for in this paragraph, the Owner may then terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Take possession of the site;
- .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.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include overhead and profit of ten percent (10%). No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, demobilization costs, and costs incurred by reason of such termination (including costs associated with termination of subcontracts), along with reasonable overhead and profit on the Work not executed.

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, 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.

§ 15.1.2 NOTICE OF CLAIMS Claims by either the Owner or Contractor must be initiated by written notice to the other party within 21 days after the claimant first recognizes the condition giving rise to the Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. If the Contractor believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Contractor was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Contract by the Owner, (5) Owner's suspension, (6) a written interpretation from the Owner, or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 If adverse weather conditions or adverse site conditions caused by adverse weather are the basis for a Claim for additional time, then (a) the number of days of delay shall have exceeded the number of assumed weather days (if any) provided in the Contract Documents, and (b) such Claim shall be documented by data substantiating that (i) weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction, or (ii) weather conditions prevented the type of Work then scheduled, or (iii) adverse site conditions caused by adverse weather prevented the type of Work then scheduled.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Intentionally omitted.

§ 15.2.2 Intentionally omitted.

§ 15.2.3 Intentionally omitted.

§ 15.2.4 Intentionally omitted.

§ 15.2.5 Intentionally omitted.

§ 15.2.6 Intentionally omitted.

§ 15.2.6.1 Intentionally omitted.

§ 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

Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.4 ARBITRATION

§ 15.4.1 Arbitration shall be the method for binding dispute resolution for all claims, disputes or other matters in question valued less than One Hundred Thousand Dollars (\$100,000.00) between the Contractor and Owner arising out of or relating to agreements to which the parties are bound, or the Contract Documents, or the breach thereof. Any and all such disputes shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force, as modified herein unless the parties mutually agree otherwise. The Architect, Construction Manager, Contractor, subcontractors and material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof except that the arbitrators shall have no authority to make any award in excess of One Hundred Thousand Dollars (\$100,000.00) unless the parties mutually agree otherwise in writing.

§ 15.4.2 Notice of the Demand for Arbitration shall be filed in writing with the other party to the arbitration and with the Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

§ 15.4.3 All parties shall carry on the work and perform their duties during any arbitration proceedings, and the Owner shall continue to make payments as required by agreements and the contract documents. However, at the request of any party, contested payments may be placed in an escrow account pending resolution of the dispute.