

§ 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, Owner~~ and Architect. Consent shall not be unreasonably withheld.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall ~~promptly endeavor to~~ notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Notwithstanding anything in the Contract Documents to the contrary, the Owner may communicate directly with any party directly or indirectly involved in the Project, including, but not limited to, subcontractors, suppliers, sureties and lenders.

PAGE 22

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

...

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

PAGE 23

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected ~~if the Owner or Architect makes reasonable objection to such substitution without written approval of the Owner.~~

...

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

§ 5.3.1 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, 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.

**§ 5.3.2** ~~The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Owner and Architect for any liability.~~

- ...
- .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~~; 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.~~ Intentionally Deleted.

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

PAGE 24

**§ 6.1.1** ~~The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~ Contractors. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

...

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

...

**§ 6.2.2** ~~If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent-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 indemnify and hold harmless the Owner and Architect against all claims caused by 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. construction caused by the fault of the Contractor. Should the Contractor cause damage to the Work or property of any Separate Contractor on the Project or other Work on the site, the Contractor shall, upon due notice from the damaged party, settle with other Contractors by agreement. If any party sues the Owner and/or Architect on account of any injury caused by the Contractor, including, but not limited to, damage to property or person or monetary damages due to defects or errors in the Work or timing or coordination of the Work, then the Owner and/or Architect shall notify the responsible Contractor who shall defend such proceedings, and, if any judgment or award against the Owner and/or Architect arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner and/or Architect for all attorneys' fees and court costs incurred.

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

...

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

PAGE 25

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

...

§ 7.2.2 As required by *The Criminal Code of 2012, Section 33E Public Contracts (720 ILCS 5/33E-9)*, any changes which authorize or necessitate an increase or decrease in either the cost of the contract by \$10,000 or more of the time of completion of the Work by 30 days or more may only be made upon the written authorization of the Owner and only upon the written determination of the Owner that:

- .1 the circumstances necessitating the change were not reasonably foreseeable at the time the contract was signed; or
- .2 the change is germane to the original contract as signed; or
- .3 the change order is in the best interest of the School District and is authorized by law.

PAGE 26

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect;~~ Owner;

...

- .5 Costs of supervision and field office personnel directly attributable to the change.

Overtime when specifically authorized by the Owner shall be paid for by the Owner on the basis of a premium payment only, plus the cost of insurance and taxes based on the premium payment. Overhead and profit will not be paid by the Owner for overtime. Contractor shall submit a detailed, itemized breakdown of quantities and unit costs, including overhead and profit as separate items with response to request for price.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits

covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net ~~increase~~, increase or decrease, if any, with respect to that change.

...

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

#### **§ 7.5 AGREED OVERHEAD AND PROFIT RATES**

**§ 7.5.1** For any adjustments to the Contract Sum based on other than the unit prices method, the Contractor agrees to charge and accept payment for its overhead and profit at the following percentages of the cost attributable to the change in the Work:

- a) If the Change is to Work self-performed by the Contractor that was awarded based on competitive bidding, Contractor shall receive ten percent (10%) overhead and five percent (5%) Fee;
- b) If the Change is to Work self-performed by the Contractor that was not awarded by competitive bidding, Contractor shall receive as its fee the Construction Manager's Fee as set forth at Section 5.1.1 of AIA Document A134-2009 entered into between the Owner and Construction Manager. This Fee shall also apply to changes in the Work performed by a Subcontractor under Sections 7.5.1(c) and (d), below;
- c) Work performed by a Subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee; and
- d) Work performed by a Sub-subcontractor shall include ten percent (10%) overhead and five percent (5%) Fee, plus a five percent (5%) Fee to the Subcontractor.

PAGE 27

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

...

**§ 8.3.1** If the Contractor is delayed at any time in the ~~commencement or progress~~ of the Work by (1) ~~an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor;~~ (2) ~~by changes ordered in the Work;~~ (3) ~~by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, progress of the Work by any act or neglect of the Owner, Owner's employees, any separate contractor employed by the Owner by changes ordered in the Work (which changes do not result, in whole or in part, from neglect of the Contractor, its agents or employees or subcontractors), regional labor disputes as they affect the Work that cannot be resolved by the Contractor agreeing to the wages, hours and working conditions as they have been established as the pattern settlement with respect to the said dispute, fire which does not result from any willful or negligent act of the Contractor, any subcontractors or any of their respective agents or employees, an unusual delay in transportation that could not have been prevented by the Contractor's planning or adequate investigation of conditions, unusually severe weather conditions not reasonably anticipated, delay authorized by the Owner, services provided by public utilities, or other causes beyond the Contractor's control;~~ (4) ~~by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~ reasonable control that were not foreseeable, the date of Substantial Completion shall be extended by Change Order for such reasonable time as the Architect shall determine, with the Owner's Approval. The Contractor may seek reimbursement for staffing costs associated with any delay that were specifically requested by the Owner, under this Section 8.3.1 by tendering a Change Order to Owner and Architect for their review and approval. It is further understood that only delays caused by the conditions listed above are beyond the Contractor's control and will be sufficient to extend the Substantial Completion date and be considered compensable. The Contractor has an affirmative duty to inquire and make reasonable investigation where circumstances would alert the

reasonable Contractor to a potential delay for whatever reason. The criteria on which the term "unusually severe weather" shall be based is the normal average amount of precipitation received in the project area, as recorder over a period of the last five (5) years at the local are United States Weather Station. Any extension of time due to unusually severe weather must be requested by the Contractor on the basis of documented records of the actual precipitation for a minimum periods of three (3) months time, compared with the normal average for the area. Also, the criteria shall include the number of excessive precipitation days over the same period and whether or not the Contractor's force worked on said days or any stage of construction was affected.

§ 8.3.1.1 Where a delay occurs which is beyond the Contractor's control, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

§ 8.3.1.2 The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay in the performance of the Work or any portion thereof for any reason for less than ninety (90) days, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

PAGE 28

~~§ 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.~~Intentionally Deleted.

§ 8.3.4 The date of final completion of the Work is the date of the Owner's written acceptance of the Architect's final Certificate for Payment or the Owner's issuance of final payment, whichever occurs first.

PAGE 29

§ 9.3.1.3 The Contractor's Application for Payment shall be made monthly.

§ 9.3.1.4 The Contractor must submit all payment requests to the Architect for all Work completed during the previous time period. Requests submitted late will not be processed until the following month.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor must submit evidence satisfactory to the Owner to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. The Owner shall have no responsibility or liability to the Contractor for the safekeeping of materials and equipment stored at the site or off the site.

...

§ 9.3.4 Each partial payment request shall be made monthly and Contractor shall request payment of ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work less the aggregate of previous payments in each case. This percentage of retainage shall be maintained until the date of Substantial Completion at which time the Owner may reduce the percentage retainage until the date of final completion. The Owner reserves the right to reduce retainage prior to Substantial Completion.

§ 9.3.5 If the Owner reduces retainage, either before or after the date of Substantial Completion, the Owner may, upon giving ten (10) days notice in writing to the Contractor, reinstate the full contract retainage and restore the retention to the basis established in Section 9.3.4 if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if any surety of Contractor withholds its consent.

§ 9.3.6 "A Sworn Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois *Mechanic's Lien Law*. Each

payment request shall include executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of Subcontractors and suppliers who were included in the immediate preceding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers. **THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR. (770 ILCS 60/5).**

PAGE 30

**§ 9.4.3 Notwithstanding any other provision in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any claim by making a final payment or progress payment of any amount.**

...

.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

...

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

PAGE 31

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

...

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

...

**§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final ~~payment~~ payment ("Punch-List"). Failure to include an item on such list the Punch-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~~ Punch-List, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item,**



whether or not included on the Contractor's ~~list~~, Punch-List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the ~~list~~ Punch-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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner ~~shall~~ may make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. With respect to Work enumerated on the Punch List, the guarantee or warranty period shall start at the time of subsequent acceptance of this Work in writing by Owner.

**§ 9.8.6** The Contractor shall complete all items on the Punch-List for the applicable Work, in accordance with the Contract Documents, prior to the Architect's final inspection for such Work. The Contractor shall be responsible for all costs incurred by the Owner resulting from multiple inspections by the Architect or any other consultant of the Owner, to ascertain Substantial Completion or final completion of the Work or the designated portion thereof. Said costs may be withheld by the Owner from any funds due the Contractor. If the funds due the Contractor are insufficient to cover the costs incurred by the Owner, the Contractor shall promptly pay the Owner for such costs upon demand. The Contractor shall be responsible for all costs incurred by the Owner, including attorneys' fees, in exercising its' rights under this Section.

**PAGE 32**

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

**PAGE 33**

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect~~, 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 reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund

to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~  
~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~  
~~.3 terms of special warranties required by the Contract Documents; or~~  
~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ Intentionally Deleted.

PAGE 34

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

...

§ 10.2.7.1 The Contractor, prior to commencing the Work, shall submit to the Architect a copy of its Jobsite Safety Handbook and state the name of the Contractor's Safety Representative who will also be responsible for enforcing all Safety Requirements.

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor shall notify Owner, in writing, of any actual or possible claim for personal injury or property damage relating to the Work, or of any occurrence that might give rise to such a claim, promptly upon obtaining the first knowledge of same. The notice shall be in writing and shall provide sufficient detail for the Owner to investigate the incident or claim.

...

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

PAGE 35

~~§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, site, 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.

...

~~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.~~ § 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable 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.

§ 10.4.2 In an emergency affecting the safety of persons or property of any of the Owner's facilities or Owner's occupied portions of the Work, the Owner may take such actions as are necessary, without prior notices to the Contractor, to protect and preserve the Owner's interests. If the emergency is attributable, in whole or in part, to any action or inaction of the Contractor, or any of its subcontractors, the Contractor shall be liable for all costs and expenses, including professional fees, incurred by the Owner in remediating such emergency and such costs and expenses may be, at the owner's option, deducted from the Contractor's Contract Sum.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Contractor shall cause the commercial liability coverage and the umbrella coverage required by the Contract Documents to include the Owner, its individual board members, agents, employees, and consultants, as well as the Architect and its officers, agents, employees and the Architect's Consultants as additional insureds.

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

...

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within ~~three (3)~~ ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner ~~shall, unless the lapse in coverage arises from an act or omission of the Owner, shall~~ have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor and all costs and expenses of any kind incurred by the Owner as a result of such stop in the Work shall be the responsibility of the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

PAGE 36

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner ~~fails-is~~ obligated by the Contract Documents to purchase and maintain property insurance, and does not intend to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been

procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

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

...

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the builder's risk policy obtained for the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this ~~section~~ Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. The waiver of subrogation in this Section 11.3.1 shall only apply to the builder's risk policy obtained pursuant to Section A.2.3 of AIA Document A101-2017 Exhibit A, if any, and shall not apply to any other insurance of the Owner whatsoever. Moreover, the waiver of subrogation contained in this Section 11.3.1 shall not be a waiver of any indemnification rights of any Indemnitee nor shall it in any way whatsoever affect any rights of indemnification of any Indemnitee.

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

...

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

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A builder's risk policy loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear,

subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14-5 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

PAGE 37

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

...

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.5.

...

**§ 12.2.2.3** The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. In the case of any Work performed in correcting defects pursuant to the guarantees provided or referred to by this Article 12, the guarantee period specified or referenced to by Article 12 shall begin anew from the date of completion of such Work.

PAGE 38

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

...

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

...

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

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, ~~including including, but not limited to,~~ those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Notwithstanding any other term or provision in this Article 13 to the contrary, in the event that any testing or inspection of the Work or any part thereof reveals defects in materials or workmanship, then the Contractor shall remedy such defects and shall bear all costs, fees and expenses associated with such testing and, if necessary, all of the costs and expenses associated with such testing which is related to determining whether such defects have been properly remedied.

PAGE 39

Payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located as permitted under the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.),~~

...

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .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 Documents.
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~ Intentionally Deleted.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the ~~Work,~~ 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.

...

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

...

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of ~~substantial~~ a breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

PAGE 40

§ 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. The Contractor shall only be compensated for work completed in accordance with the Contract Documents, less any costs, fees or expenses incurred by the Owner as a result of Owner's termination for cause.

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

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

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; ~~and~~
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and ~~purchase orders; and~~
- .4 place no further orders and enter into no further Subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- .5 terminate all Subcontracts and orders to the extent they relate to the work terminated unless Owner opts to take assignment under Section 5.4;
- .6 proceed to complete the performance of Work not terminated; and
- .7 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Allowance shall be made for payments previously made to the Contractor for the terminated portion of the Work, and claims that the Owner has against the Contractor under the Contract.

PAGE 41

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

...

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

...

The Contractor and Owner waive ~~Claims against each other for consequential damages consequential damages for claims, disputes, or other matters in question, 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.~~

~~Agreement, to the extent such consequential damages are not covered by the other party's available insurance proceeds. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents of this Agreement.~~

...

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

PAGE 42

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

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

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



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

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

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

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

...

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

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

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

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

PAGE 43

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

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

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

#### **ARTICLE 16 NON DISCRIMINATION**

§ 16.1 NON-DISCRIMINATION The Contractor agrees to fully comply with the requirements of the Illinois *Human Rights Act*, 775 ILCS 5/1-101 *et seq.*, including, but not limited to, the provisions 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 1201 *et seq.*, and rules and regulations promulgated thereunder.

The following provisions are included herein pursuant to the requirement of the regulations of the Illinois Department of Human Rights Title 44, Part 750, of the Illinois Administrative Code and contractor shall be required to comply with these provisions only if and to the extent that they are applicable under the law.

As required by Illinois law, in the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, 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:

A. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, age, citizenship status, physical or mental handicap unrelated to ability, military status, or an 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, sexual orientation, marital status, national origin or ancestry, age, citizenship status, physical or mental handicap unrelated to ability, or an 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 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 obligation 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 purpose 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 Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or 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 17 OTHER STATUTORY REQUIREMENTS**

**§ 17.1 PREVAILING WAGES** It is hereby stipulated that all laborers, workers and mechanics performing Work under the Contract shall not be paid less than the prevailing wage as found by the Illinois Department of Labor or the Owner, and that Contractor and all Subcontractors shall in all other respects comply with the *Prevailing Wage Act* in carrying out Work under the Contract. If, during the course of Work under this Contract, the Department of Labor revises the prevailing rate of hourly wages to be paid under this contract, Contractor shall have the sole responsibility and duty to ensure that the revised prevailing rate of hourly wages is paid by Contractor and all Subcontractors to each worker to whom a revised rate is applicable. The prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website. Revisions to the prevailing wage as set forth above shall not result in an increase in the Contract Sum. Contractor shall protect, defend, indemnify and hold the Owner harmless for any claims or demands made as a result of Contractor's failure to comply with this Section. Each Contractor and Subcontractor shall submit, on a monthly basis, a certified payroll to the Owner, evidencing the Contractor's and Subcontractor's compliance with the *Prevailing Wage Act*. Further all bonds required of the Contractor shall contain a provision as will guarantee the faithful performance of this prevailing wage clause.

**§ 17.2** The *Public Works Preference Act* (30 ILCS 560/0.01 *et seq.*), the *Employment of Illinois Workers on Public Works Act* (30 ILCS 570/0.01 *et seq.*), and the *Steel Products Procurement Act*, 30 ILCS 565/1 *et seq.*, shall prevail on this project to the extent such Acts are applicable and enforceable.

**§ 17.3 Bidding Eligibility Certification.** By submitting a bid, the Contractor certifies that the Contractor is not barred from bidding on the Contract under the bidding procedures set forth in Section 10-20.21 of the *School Code* (105 ILCS 5/10-20.21) as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the *Criminal Code of 1961*, (720 ILCS 5/33E) or by any other law or regulation. The Contractor acknowledges that the Owner may declare the contract bid void if it determines the foregoing certification to be false.

**§ 17.4 Criminal Background Checks and Contractor Certification.** The Contractor represents and warrants that none of its employees or those of any of its Subcontractors performing Work at the site are prohibited by law from being present on school and/or public property. The Owner reserves the right to direct the Contractor, at any time during the Project, to immediately obtain criminal background investigations of any of Contractor's or Subcontractor's employees who are or will be performing work in or around a building when students are or will be present to ascertain whether such employees have been convicted of any of the offenses enumerated in 105 ILCS 5/10-21.9. Such criminal background checks will be performed at Contractor's or Subcontractor's expense and at no cost to Owner, by change order or otherwise. In the event any employee of the Contractor or Subcontractor has been convicted of any prohibited offense set forth in 105 ILCS 5/10-21.9, said employee shall be promptly removed from the Site and replaced by another individual. Furthermore, to the extent required by 105 ILCS 5/24-5 or any other law, rule or regulation, Contractor shall provide to the Owner, at Contractor's expense, evidence of Contractor's employees' physical fitness to perform their duties and freedom from communicable disease.

**§ 17.5 Presence of Child Sex Offenders and Disruptive Persons On School Property.** Contractor acknowledges that, pursuant to the Illinois *Criminal Code* (720 ILCS 5/11-9.3), it is unlawful for a child sex offender to knowingly be present on school property when persons under the age of 18 are present without the specific notification to and permission of the Superintendent of Schools or the Board of Education. Child sex offenders found to be present on school property without permission will be considered trespassers and will be prosecuted in accordance with Illinois law. Contractor shall ensure that its employees and employees of subcontractors are notified of this law and that said

employees are directed to notify Contractor if they have been convicted of a sex offense restricting their presence on school property. Contractor will then provide appropriate and immediate notification to Owner. Owner reserves the right to request the removal from the Project of any person, including, but not limited to, employees of Contractor and Subcontractors, who engage in conduct in violation of the law or Board of Education Policy or conduct otherwise disruptive to the educational process or detrimental to students in the area. The costs related to such removal and substitution of personnel shall be borne solely by the Contractor or Subcontractor.

§ 17.6 Gambling, Alcohol and Tobacco Use Prohibited. In accordance with State and Federal law and Board of Education policy, the use of alcohol and any tobacco and engaging in gambling activity products on school property are prohibited.

§ 17.7 Drug Free Workplace Certification. By submitting a bid, Contractor certifies that it will provide a drug free workplace as required by the Illinois *Drug Free Workplace Act* (30 ILCS 580/1 et seq.) by:

(a) Publishing a statement:

- (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace.
- (2) Specifying the actions that will be taken against employees for violations of such prohibition.
- (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction.

(b) Establishing a drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's or contractor's policy of maintaining a drug free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug violations.

(c) Making it a requirement to give a copy of the statement required by subsection (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

(d) Notifying the contracting or granting agency within 10 days after receiving notice under part (B) of paragraph (3) of subsection (a) from an employee or otherwise receiving actual notice of such conviction.

(e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5.

(f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of this Section.

#### **ARTICLE 18 ADDITIONAL PROVISIONS**

§ 18.1 Exercise of Due Care. Contractor acknowledges that students may be present in the building and in the area during construction. Contractor will exercise due care and appropriate conduct, and will direct and ensure that all trade and Subcontractors exercise due care and appropriate conduct, in carrying on activities on the Project in order to prevent injury to students, employees, and all invitees of the Owner.

§ 18.2 Determinations in Award of Bid. Contractor agrees that the determination of the lowest responsible bidder, issues of contractor compliance with bid specifications and other Contract Document requirements, as well as material variances from and waiver of such requirements, in the award of bids on this Project shall be in the sole and absolute discretion of the Owner. Further, Contractor agrees that, should it choose to challenge such a determination by Owner, Contractor shall bear all Owner costs and attorneys fees relating to defense of such challenge.

**§ 18.3 THIRD PARTY BENEFICIARY. THESE GENERAL CONDITIONS SHALL ONLY BIND THOSE PARTIES THAT ARE IN DIRECT PRIVITY WITH EACH OTHER AND HAVE MADE THESE GENERAL CONDITIONS A PART OF THEIR CONTRACT. NO PARTY MAY RELY UPON THE**

**TERMS AND CONDITIONS HEREIN OR MAY AVAIL ITSELF OF ANY OF THE TERMS OR CONDITIONS CONTAINED HEREIN UNLESS THE AFOREMENTIONED IS TRUE. ALL TERMS AND CONDITIONS IN THESE GENERAL CONDITIONS ARE FOR THE SOLE BENEFIT OF THE PARTIES HERETO; NONE OF THE TERMS AND CONDITIONS CONTAINED HEREIN ARE INTENDED TO BENEFIT ANY THIRD PARTY, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, THE PAYMENT AND COMPLETION PROVISIONS IN ARTICLE 9. WITHOUT LIMITING THE FOREGOING, PROVISIONS IN THESE GENERAL CONDITIONS THAT REFERENCE SUBCONTRACTORS, SUPPLIERS OR OTHER THIRD-PARTIES ARE NOT FOR THEIR BENEFIT WHATSOEVER AND MAY NOT BE RELIED UPON BY SUCH PARTIES.**

# Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:24:16 ET on 01/24/2019 under Order No. 9436461454 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*