

UNION COUNTY BOARD OF EDUCATION CONTRACT ROUTING SHEET

Contractor Name: Hoss Contracting, Inc.
 Address: PO Box 968
 City, State, Zip: Monroe, NC 28111
 Contact Name: Hoss Hinson
 Telephone Number: 704.233.0488

UCPS Contract Number: 3-97360041

Purpose of Contract (location and brief description): Sun Valley High School-Facilities Improvements

Submitting Department: Facilities Department

Date Submitted: 3.1.2023

Budget Account Number: FY20BLDGSY.SVHS360 .RENOVATE .

Funding Source: DM

Contract Amount: \$ 686,400

Contract Period: Final Completion January 1, 2023

UCPS Employee to Contact: Penny Helms/Dave Burnett

Phone Number: 704-296-3160

NOTE: Individuals listed below should initial, date, and forward this form after completing their responsibilities relating to this Contract.

1. Approved by Fund Owner/Acquire Vendor Signature and proper
**Insurance Certificate with UCBOE NAMED as
 CERTIFICATE HOLDER.**

A. Insurance Certificate Reviewed/Approved by Risk Management

2. Approved by Appropriate Representative(s) of UCPS:

- ☒ UCPS Project Coordinator
☒ UCPS Department Head/School Principal
☒ Asst. Supt. for Administration & Operations
☐ Asst. Supt. for Human Resources
☐ Asst. Supt. for Instructional Programs Asst.
☐ Asst. Supt. of Student Support
☐ Chief School Performance Officer
☐ Chief Technology Officer

INITIAL

DATE

DS

SH

DS

MB

DS

DAB

DS

CM

FORWARD TO UCPS GENERAL COUNSEL OFFICE

DS
SS

DS
KB

DS
MM

3. Approved by Legal Counsel

FORWARD TO SUPERINTENDENT/BOARD OF EDUCATION

4. Approved by Superintendent/Board of Education

FORWARD TO FINANCE

6. Pre-audited by Representative of Finance Officer

DS

SM



AIA® Document A101® – 2017

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

AGREEMENT made as of the 7th day of February in the year 2023
(In words, indicate day, month and year.)

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

Union County Board of Education
400 N Church Street
Monroe, North Carolina 28112

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

Hoss Contracting, Inc.
PO Box 968
Monroe, North Carolina 28111

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

Sun Valley High School
Facilities Improvements
3-97360041

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

Boomerang Design, P.A
1230 W Morehead Street
Suite 214
Charlotte, North Carolina 28208

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

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

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

[X] By the following date: December 28, 2023

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

Portion of Work	Substantial Completion Date
Base Bid, Alternate 1 and Alternate 2	July 31, 2023
Important: All Work shall be closely scheduled with assigned UCPS Project Manger to ensure no disruption to school activities.	

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Six Hundred Eighty-Six Thousand, Four Hundred Dollars and No Cents (\$ 686,400.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

(Table deleted)
Alternate 1, Alternate 2 and Alternate 3.

(Table deleted)
(Paragraphs deleted)

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

Item	Price
Unforeseen Conditions	Thirty Thousand Dollars (\$30,000.00)

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

(Table deleted)
Unsuitable Soil Excavation with off-site removal, replace with suitable off-site fill, compacted in place \$110.00 cubic yard

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

The amount of \$500 per calendar day for failing to meet Substantial Completion to be calculated until substantial completion is achieved; and the amount of \$250 per calendar day for failing to meet the Final Completion to be calculated until substantial completion is achieved.

(Paragraphs deleted)
ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth (25th) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Thirtieth (30th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

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

See Supplemental Conditions

§ 5.1.7.1.1 The following items are not subject to retainage:

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

See Supplemental Conditions

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

Init.

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

See Supplemental Conditions

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

See Supplemental Conditions

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

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

§ 5.2 Final Payment

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

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

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

(Paragraphs deleted)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

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

Mr. Maurice Brown
Project Manager
UCPS Facilities Department
201 Venus Street
Monroe, North Carolina 28110

§ 8.3 The Contractor's representative:

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

Hoss Hinson
Hoss Contracting, Inc.
PO Box 968
Monroe, NC 28111

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth elsewhere in the Specifications.

§ 8.5.2 The Contractor shall provide bonds as set elsewhere in the Specifications.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

Init.

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction
- (Paragraphs deleted)
- .3 Drawings

Number	
G101	COVER SHEET
G102	CODE DATA & SUMMARY SHEET
G103	LIFE SAFETY PLAN
L100	COURTYARD DEMOLITION PLAN
L200	COURTYARD SITE PLAN
L300	COURTYARD PLANTING PLAN
A001	FIRST FLOOR DEMOLITION PLAN
A100	REFERENCE SITE PLAN
A101	FLOOR PLANS, SECTIONS, SCHEDULES & DETAILS
A701	ALTERNATE PLANS, ELEVATIONS, SECTIONS & DETAILS
S001	GENERAL NOTES
S100	OVERALL SITE PLAN
S101	ENLARGED STRUCTURAL PLANS & DETAILS
E001	VOCATIONAL ROOM LIGHTING-DEMO & NEW
E101	OVERALL CANOPY DEMOLITION PLAN
E102	ENLARGED CANOPY DEMOLITON PLAN-AREA A
E103	ENLARGED CANOPY DEMOLITION PLAN-AREA B
E104	ENLARGED CANOPY EXISTING CONDITIONS PLAN-AREA C
E105	ENLARGED CNAOPY EXISTING CONDITIONS PLAN-AREA D
E201	OVERALL CANOPY RENOVATION PLAN
E202	ENLARGED CANOPY RENOVATION PLAN-AREA A
E203	ENLARGED CANOPY RENOVATION PLAN-AREA B
E301	SPECIFICATIONS
E302	SPECIFICATIONS

.6 Specifications

Section/Title
BID AND CONTRACT DOCUMENTS
General Advertisement
Schedule Key Dates
AIA 701-2018 Instructions To Bidders
00 22 13 Supplementary Instruction to Bidders
AIA 101-2017 Standard form of Agreement
00 73 00 Supplementary and other Conditions of the Contract
A305 Contractor's Qualification Statement
HUB NC HUB Good Faith Efforts Affidavits
BID Bid Submittal Form
DIVISION 00 - PROCUREMENT and CONTRACTING REQUIREMENTS
00 01 07 Seals Page
00 10 00 Table of Contents
DIVISION 01 - GENERAL REQUIREMENTS
01 10 00 Summary

- 01 14 01 Work Restrictions (Renovations)
- 01 23 00 Alternates
- 01 26 00 Contract Modification Procedures
- 01 29 00 Payment Procedures
- 01 31 00 Project Management and Coordination
- 01 32 00 Construction Progress Documentation
- 01 33 00 Submittal Procedures
- 01 40 00 Quality Requirements
- 01 42 01 References
- 01 50 00 Temporary Facilities and Controls
- 01 60 00 Product Requirements
- 01 73 00 Execution Requirements
- 01 73 29 Cutting and Patching
- 01 77 00 Closeout Procedures
- 01 78 23 Operation and Maintenance Data
- 01 78 39 Project Record Documents
- DIVISION 02 - EXISTING CONDITIONS**
- 02 41 19 Selective Demolition
- DIVISION 04 – MASONRY**
- 04 05 14 Masonry Mortar and Grout
- 04 20 00 Unit Masonry
- DIVISION 07 - THERMAL and MOISTURE PROTECTION**
- 07 11 13 Bituminous Dampproofing
- 07 26 00 Vapor Retarders
- DIVISION 08 – OPENINGS**
- 08 11 13 Hollow Metal Doors and Frames
- 08 14 29 Prefinished Wood Doors
- 08 71 00 Door Hardware
- 08 80 00 Glazing
- DIVISION 09 – FINISHES**
- 09 90 00 Painting
- DIVISION 10 – SPECIALTIES**
- 10 73 26 Protective Walkway Coverings
- DIVISION 32 – EXTERIOR IMPROVEMENTS**
- 32 31 13 Chain-Link Fences and Gates

.7 Addenda, if any:

Number	Pages
1	1

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

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

(Paragraphs deleted)

[X] Supplementary and other Conditions of the Contract:

Document	Title	Pages
002213-7	Supplementary Instructions to Bidders	5
007300	Supplementary and Other Conditions of the Contract	19

(Paragraphs deleted)

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders,

sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Hoss Contracting, Inc.’s Bid Submittal

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

DocuSigned by:
Kathy Heintel
OWNER (Signature)
Union County Board of Education
(Printed name and title)

DocuSigned by:
Hoss Hinson
CONTRACTOR (Signature)
Hoss Contracting, Inc.
(Printed name and title)

DocuSigned by:
Sara Hymel
Risk Management

As to Form:

DocuSigned by:
Michelle Morris
General Counsel

This instrument has been preaudited in the Manner
Required by the School Budget and Fiscal Control Act.

DocuSigned by:
Shanna McLamb
Finance Officer

Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:02:57 ET on 03/01/2023.

PAGE 1

AGREEMENT made as of the 7th day of February in the year 2023

...

Union County Board of Education
400 N Church Street
Monroe, North Carolina 28112

...

Hoss Contracting, Inc.
PO Box 968
Monroe, North Carolina 28111

...

Sun Valley High School
Facilities Improvements
3-97360041

...

Boomerang Design, P.A
1230 W Morehead Street
Suite 214
Charlotte, North Carolina 28208

PAGE 2

[X] A date set forth in a notice to proceed issued by the Owner.

PAGE 3

[X] By the following date: December 28, 2023

...

Base Bid, Alternate 1 and Alternate 2 July 31, 2023

Important: All Work shall be closely scheduled with assigned UCPS Project Manger to ensure no disruption to school activities.

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Six Hundred Eighty-Six Thousand, Four Hundred Dollars and No Cents (\$ 686,400.00), subject to additions and deductions as provided in the Contract Documents.

...

Item	Price
Alternate 1, Alternate 2 and Alternate 3.	
§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. <i>(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)</i>	

Item	Price	Conditions for Acceptance
...		
<u>Unforeseen Conditions</u>	<u>Thirty Thousand Dollars (\$30,000.00)</u>	
...		

Item	Units and Limitations	Price per Unit (\$0.00)
<u>Unsuitable Soil Excavation with off-site removal, replace with suitable off-site fill, compacted in place</u>		<u>\$110.00 cubic yard</u>

...

The amount of \$500 per calendar day for failing to meet Substantial Completion to be calculated until substantial completion is achieved; and the amount of \$250 per calendar day for failing to meet the Final Completion to be calculated until substantial completion is achieved.

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

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth (25th) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Thirtieth (30th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

...

See Supplemental Conditions

...

See Supplemental Conditions

PAGE 5

See Supplemental Conditions

...

See Supplemental Conditions

...

§ 5.3 Interest

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

—%

...

☒ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

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§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

...

Mr. Maurice Brown
Project Manager
UCPS Facilities Department
201 Venus Street
Monroe, North Carolina 28110

...

Hoss Hinson
Hoss Contracting, Inc.
PO Box 968
Monroe, NC 28111

...

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

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

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2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

- ~~3~~ — AIA Document A201™-2017, General Conditions of the Contract for Construction
~~4~~ — AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

~~5~~ — 3 Drawings
Number

Title **Date**

<u>Number</u>	
G101	COVER SHEET
G102	CODE DATA & SUMMARY SHEET
G103	LIFE SAFETY PLAN
L100	COURTYARD DEMOLITION PLAN
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...

Section **Title** **Date** **Pages**

<u>Section/Title</u>
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AIA 101-2017 Standard form of Agreement
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- 32 31 13 Chain-Link Fences and Gates

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Number	Date	Pages
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Number	Pages
<u>1</u>	<u>1</u>

...

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:
☒ Supplementary and other Conditions of the Contract:

Title	Document	Date	Title	Pages
	<u>002213-7</u>		<u>Supplementary Instructions to Bidders</u>	<u>5</u>
	<u>007300</u>		<u>Supplementary and Other Conditions of the Contract</u>	<u>19</u>

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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Hoss Contracting, Inc.’s Bid Submittal

...

Union County Board of Education

Hoss Contracting, Inc.

...

Risk Management

As to Form:

General Counsel

This instrument has been preaudited in the Manner
Required by the School Budget and Fiscal Control Act.

Finance Officer

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 18:02:57 ET on 03/01/2023 under Order No. 4104238915 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

DRAFT AIA® Document A101® – 2017

Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the «7th » day of «February » in the year «2023 »
(In words, indicate day, month and year.)

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

«Sun Valley High School »
«Facilities Improvements 3-97360041»

THE OWNER:
(Name, legal status and address)

«Union County Board of Education »
«400 N Church Street »
«Monroe, NC 28112 »

THE CONTRACTOR:
(Name, legal status and address)

«Hoss Contracting, Inc. »
«PO Box 968 »
«Monroe, NC 28111 »

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

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§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

See Supplementary Conditions

Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

See Supplementary Conditions

Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure

against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [☐] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

<< >>

- [☐] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

<< >>

- [☐] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

<< >>

- [☐] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

<< >>

- [☐] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

<< >>

- [☐] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

<< >>

- [☐] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

<< >>

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [☐] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

« »

- [☐] **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

See Supplementary Conditions

Limits**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS****§ A.3.1 General**

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« See Supplementary Conditions »

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ **A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ **A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ **A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ **A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ **A.3.3 Contractor's Other Insurance Coverage**

§ **A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« See Supplementary Conditions »

§ **A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [« »] § **A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below: *(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

« »

- [« »] § **A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

- [« »] § **A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- [« »] § **A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the

construction site on an “all-risks” completed value form.

[« »] § A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[« »] § A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
See Supplementary Conditions	

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	See Supplementary Conditions
Performance Bond	See Supplementary Conditions

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«See Supplementary Conditions for all modifications of terms and conditions as it relates to the A101-2017 Exhibit A Document.»

DRAFT AIA® Document A201® – 2017**General Conditions of the Contract for Construction****for the following PROJECT:***(Name and location or address)*

«Sun Valley High School »
 «Facilities Improvements, 3-97360041 »

THE OWNER:*(Name, legal status and address)*

«Union County Board of Education »
 «400 N Church Street »
 «Monroe, NC 28112 »

THE ARCHITECT:*(Name, legal status and address)*

«Boomerang Design, P.A »
 «1230 W Morehead Street»
 «Suite 214»
 «Charlotte, North Carolina 28208»

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

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 Basic Definitions****§ 1.1.1 The Contract Documents**

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. 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, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT**§ 4.1 General**

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

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

- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

§ 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**

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**§ 10.1 Safety Precautions and Programs**

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed

by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect

timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

§ 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.

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

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DOCUMENT 00 73 00 -SUPPLEMENTARY AND OTHER CONDITIONS OF THE CONTRACT

The following supplements modify the AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor; the AIA Document A201-2017 General Conditions of the Contract for Construction; the AIA Document E203-2013 Building Information Modeling and Digital Data Exhibit; the AIA Document G201-2013 Project Digital Data Protocol Form; and the AIA Document G201-2013 Project Building Information Modeling Protocol Form (the supplements are collectively referred to herein as "Supplementary Conditions". Where a portion of the above AIA documents is modified or deleted by these Supplementary Conditions, the unaltered portions of the above AIA documents shall remain in effect.

The term "Architect" is hereby defined as the primary designer of the project and may be referred to in Contract Documents as "Architect", "Designer" or "Engineer".

AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Add the following sections after Section 3.3.3:

§ 3.4 It is expressly understood and agreed by and between the Contractor and the Owner that the Contract Time defined above for completion of the Work is a reasonable time for completion of same, taking into consideration the average climatic range and usual conditions prevailing in this locality.

§ 3.5 The Contractor shall achieve Final Completion of the Work within [30] days of the date of Substantial Completion unless specified otherwise in the bid document.

ARTICLE 5 PAYMENTS

Delete Section 5.1.7.1 and Section 5.1.7.1.1 and replace with the following:

§ 5.1.7.1 Until the Work is 50 percent complete, the Owner shall pay 95 percent of the amount due to the Contractor on account of progress payments, withholding 5% of the amount due (the "Contract Retainage"). At this time the Work is 50 percent complete and thereafter, the Architect may certify remaining partial payments to be paid in full.

Delete Section 5.1.7.2 and replace with the following:

§ 5.1.7.2 The Owner may elect to reinstate withholding of the Contract Retainage if the manner of completion of the Work and its progress do not remain satisfactory to the Architect or if the Surety withholds or revokes its consent, or for other good and sufficient reasons.

Delete Section 5.1.7.3 in its entirety.

Delete Section 5.3 in its entirety.

ARTICLE 7 TERMINATION OR SUSPENSION

Delete Section 7.1.1 in its entirety.

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

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

Add the following sections:

§ 1.1.9 The Surety shall be defined as the corporate body which is bound with and for the Contractor and which engages to be responsible for his acceptable performance of the Work and for his payment of all debts pertaining to the Work, and which body is licensed to do business within the State in which this Project is located.

§ 1.1.10 The word “approved” shall be defined as the written approval by the Architect, except as otherwise modified. The terms “directed”, “required”, “permitted”, or words of like import, shall be considered as similarly defined as to the party directing, requiring, permitting, or similarly instructing the contractor.

§ 1.1.11 The words “provide” or “provided” shall be defined as both furnishing and installing a thing, product, system, assembly, material, or the like.

§ 1.1.12 “All” is implied throughout the Trade Sections of the Specifications and shall mean to do or accomplish all things under the Work, Contract, except where other provisions are specified. Hence, the use of the word “All” is limited, in general, to the general parts and the work included in the Scope of each and every Trade Section, or to residuary legate clauses requiring the doing of all things except those sequentially listed as excluded.

§ 1.1.13 Wherever the word “product” appears within the Contract Documents, it shall be understood to mean material, equipment, assemble, manufacturers, brands, trade names, items of similar description as applicable.

§ 1.1.14 The word “Trade” (with initial capital letter) is used here to designate a Section title and not a trade or craft as set up for labor jurisdiction in an area.

Add the following Section 1.1.1.1 after Section 1.1.1:

§ 1.1.1.1 The Contract documents executed or identified in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

Add the following Section 1.1.5.1 after Section 1.1.5:

§1.1.5.1 Where only part of the Work is indicated, similar parts are considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described are deemed to incorporate similar material and construction.

§1.2 Correlation and Intent of the Contract Documents

Add the following Section after Section 1.2.1.1:

§1.2.1.2 The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work, including Work, whether or not shown or described, which may reasonably be inferred to be required for the completion of the Work in accordance with information given in the Contract Documents.

Add the following section after Section 1.2.3:

§1.2.4 If there should be a conflict between two or more of the Contract Documents, the following order of interpretation shall apply:

- .1 Where requirements specifically set forth in the AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor are in conflict with other Contract Documents, the AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor shall govern.
- .2 Where there is a conflict between the requirements of (1) the Supplementary Conditions and (2) the AIA Document A201-2017 General Conditions of the Contract for Construction; the AIA Document E203-2013 Building Information Modeling and Digital Data Exhibit; the AIA Document G201-2013 Project Digital Data Protocol Form; or the AIA Document G201-2013 Project Building Information Modeling Protocol Form, the requirements of the Supplementary Conditions shall govern, except where the requirements set forth in the Supplementary Conditions are contrary to law, in which case the legal requirements shall govern.
- .3 The AIA Document A201-2017 General Conditions of the Contract for Construction, as supplemented, shall take precedence over the other Contract Documents except for the AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor.
- .4 Large-scale details shall, in general, govern and take precedence over small-scale details, which they are intended to amplify. Figure dimensions. Do not obtain dimensions by scaling.
- .5 Where there is a conflict between the Drawings and Specifications or a conflict within the Drawings or within the Specifications, the conflict shall be brought to the attention of the Architect for determination and resolution of the conflict. Should the Architect fail to be notified prior to commencement of the work, the responsibility for the work shall be that of the Contractor. If during the bidding or pricing of the contract, a discrepancy is noted and the Architect has not been consulted, the higher cost solution is to be taken for cost considerations and the solution will be determined by the Architect when notified.

Add the following section after Section 1.6.2

§ 1.6.3 The Architect may, with the concurrence of the Owner, furnish to the Contractor versions of Instruments of Service in electronic form. The Contract Documents executed or identified in accordance with Subparagraph 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic means involving computers.

§ 1.6.4 The Contractor shall not transfer or reuse Instruments of Service in electronic or machine readable form without the prior consent of the Architect. See Section 01 33 00 "Submittal Procedures" for conditions and requirements.

§ 1.6.5 Subcontractors, Sub-subcontractors, and Material of Equipment Supplier must communicate through the Contractor for the use of Instruments of Service in Electronic Form.

ARTICLE 2 OWNER

Modify Section 2.3.4-Delete the portion of the first sentence which reads, ".....and a legal description of the site."

Modify Section 2.3.6-Add at the end of subparagraph, "....Additional sets will be furnished at the Architect's standard costs for reproduction plus postage and handling, if any."

ARTICLE 3 CONTRACTOR

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

Delete sentences 4, 5, and 6 from Section 3.3.1 and insert the following:

"If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give advance written notice to the Owner and Architect, informing the Owner and the Architect of the alternate means, methods, techniques, sequences, or procedures the Contractor intends to utilize in the performance of the Work, and unless the Owner or the Architect takes exception to the proposed means, methods, techniques, sequences or procedures, the Contractor shall proceed with the Work using the alternate means, methods, techniques, sequences or procedures that the Contractor has determined are safe."

Add the following sections after Section 3.3.2:

- .1 The Jessica Lunsford Act enacted by the North Carolina General Assembly requires that the Contractor and subcontractors, consultants, sub-consultants, and vendors be in compliance with this statute.
- .2 The Contractor and subcontractors, consultants, sub-consultants, and vendors shall annually conduct a review of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program and the National Sex Offender Registry for all employees who will provide services under this Contract. Any employee of the Contractor, subcontractor, consultant, sub-consultant, or vendor found to be registered on any of the lists identified herein shall not perform work under this Contract and shall be permitted to enter property owned by Union County Public School or Union County on behalf of Union County Public Schools. Failure to comply may result in legal action and termination of the Contract for default.
- .3 It is the Contractor's responsibility to ensure that all subcontractors, sub-consultants and vendors involved with this Project are in compliance with this law.
- .4 Employees of the Contractor, subcontractor, consultant, sub-consultant, and their vendors shall dress appropriately for a school environment and perform their work in a

professional manner. Determination of compliance with this requirement shall be solely at the discretion of the Owner. Contractor shall immediately remove non-complying personnel from the Owner's property.

- .5 Union County Public Schools is a tobacco-free facility. Employees of the Contractor, subcontractor, consultant, sub-consultant, and their vendors shall refrain from use of all tobacco products including e-cigarettes while on the Owner's property.
- .6 Employees of the Contractor, subcontractor, consultant, sub-consultant, and their vendors shall comply with the Owner's safety projects, the Contractor's safety program and, with state and federal safety regulations. The Contractor shall provide a copy of the Contractor's written safety program to the Owner's Facilities Project Manager within three business days of request.

§ 3.3 Supervision and Construction Procedures

Add the following sections to Section 3.3:

§3.3.4 The Contractor shall layout all the Work as required by the Drawings and be held responsible for damage, if any is incurred, due to incorrect layout of Work. The Contractor shall establish all building lines, benchmarks, and levels from which all trades can work, and take necessary measures to keep the marks in visible evidence throughout all stages of the Work.

§3.3.5 In order to insure proper progress to Work, the Contractor shall be prepared to guarantee to each of his Subcontractors the dimension which they may require for proper fitting of their work to all adjacent or adjoining work.

§3.3.6 The Contractor shall verify all measurements at building and premises, and where necessary measurements cannot be secured at the Project when required, the matter shall be referred to the Architect.

§ 3.4 Labor and Materials

Add the following section to Section 3.4.1:

§3.4.1.1 Not later than 15 days following date of issuance of Notice of Intent to Award or commencement of the Work, whichever occurs first, the Contractor shall furnish in writing to the Architect a Product List indicating the names and model numbers of specific products, equipment and systems proposed for the Work unless specified otherwise in the bid document.

Delete Section 3.4.2 and substitute the following Section 3.4.2 and Sections .1 and .2:

§ 3.4.2 After the Contract has been executed, the Architect will consider a formal request for the substitution of comparable products in place of those specified only under the conditions and limitations set forth in Division 01 General Requirements. By making requests for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, except as specifically indicated by the Contractor in writing as part of the request;

- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.

Add Sections .3 and .4

- .3 certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts, and excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent, and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all aspects.

§ 3.6 Taxes

Add the following Section 3.6.1 after Section 3.6:

§ 3.6.1 Sales and use tax on materials are included in the Contract Sum. The Contractor shall document sales and use tax paid by the Contractor and subcontractors on material purchases in accordance with NCGS 105-164.14c. The contractor shall submit certified documentation with each Application for Payment in a notarized form acceptable to the Owner. Refund of sales and use tax paid by the Contractor, if any, shall be for the benefit of the Owner.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

Add the following Sections 3.7.1.1 after Section 3.7.1:

§ 3.7.1.1 The Owner will pay the Capacity Use Fee (Impact Fee) for the Project. All other fees shall be the responsibility of the Contractor.

Add the following Sections 3.7.2.1 after Section 3.7.2:

§ 3.7.2.1 Contractor shall comply with the E-Verification requirements under Article 2 of Chapter 64 of the North Carolina General Statutes.

§ 3.7.2.2 Contractor certifies that, as of the date listed within the contract documents, it is not on the Final Divestment List as created by the State Treasurer pursuant to NCGS §143-6A-4. In compliance with the requirements of the Iran Divestment Act and NCGS § 143C-6A-5(b), Contractor shall not utilize in the Performance of the contract any subcontractor that is identified on the Final Divestment List.

Add the following Section 3.7.6 after Section 3.7.5:

§ 3.7.6 Contractor shall comply with project statement notice requirements of NCGS General Statute §44A-27, and shall ensure that subcontractors and suppliers likewise comply with respect to other subcontractors and suppliers, if any, who are not in direct contract with the Contractor.

- . 1 The Contractor shall indemnify and hold harmless the Owner from any costs, including without limitation costs of delays or attorney fees incurred by Owner, arising out of any dispute or litigation involving sub-subcontractors and subcontractors or Contractor including without limitation any disputes arising out of Contractor's or its subcontractors' failure to comply with applicable lien statutes. All costs of such dispute

or litigation involving sub-subcontractors and subcontractors or Contractor shall be borne by Contractor.

§ 3.9 Superintendent

Add the following sections to Section 3.9.1:

- .1 The superintendent shall be considered competent if he has successfully completed at least two other similar projects of similar scope and complexity to this Project while serving in the role of Project superintendent.
- .2 The superintendent shall be on site while work is being performed.

Add Section 3.9.4 to Section 3.9:

§ 3.9.4 The Contractor shall maintain the same approved Project Manager and Field Superintendent from the time of issuance of the Notice to Proceed until the Date of Substantial Completion, or shall submit proposed changes in personnel to the Architect in accordance with 3.9.2.

§ 3.10 Contractor's Construction Schedules

Add the following Section 3.10.4 after Section 3.10.3:

§ 3.10.4 Based upon local Weather data, the following 10-year average shall establish the number of rain days to be included in the Contractor's Construction Schedule as shown in Table 1a. Rain days are defined as periods of 24 hours within which precipitation is one-tenth (0.1) of an inch or greater. Rain days shall be understood to be work days, exclusive of holidays, Sundays and other non-working days. Rain-related days will be considered based upon amounts of precipitation encountered during the construction process. The Contractor shall use these monthly averages when establishing the construction schedule for this project. Claims for delays due to abnormal rain delays will not be considered until the number of rain days during which critical path work is actually delayed exceeds the number allowed in the schedule as follows:

January: 6 Days	May: 6 Days	September: 4 Days
February: 6 Days	June: 5 Days	October: 4 Days
March: 6 Days	July: 6 Days	November: 4 Days
April: 5 Days	August: 6 Days	December: 6 Days

- .1 Rain days, as identified above, are to aid the Contractors in their scheduling. These days are included in the total time allowed for construction as defined in Article 8 of these Supplementary General Conditions. Used and unused days are not available for extending the project time nor may they be used to decrease the project time. Rain days shall cease upon the drying in/enclosure of the building unless the Contractor can prove his claim for weather related delay based upon extreme conditions or Acts of God.

§ 3.12 Shop Drawings, Product Data and Sample

§ 3.12.5 Modify to delete the word "approve" in the first line and substitute "stamp with his approval...."

ARTICLE 4 ARCHITECT

§ 4.1 General

Add the following section after Section 4.1.1:

§ 4.1.1.1 The term "Architect," "Architect/ Engineer," or "Engineer" as used in the Contract Documents means the Architect or his authorized representative.

§ 4.2 Administration of the contract

Delete the fifth sentence of Section 4.2.4 in its entirety.

ARTICLE 5 SUBCONTRACTORS

Add the following Section 5.1.2.1 after Section 5.1.2:

§ 5.1.2.1 Sub-Subcontracting of work is discouraged on Union County Public School Projects. The Contractor is directly responsible for the performance of Subcontractors and their Sub-subcontractors. If the Contractor chooses to allow sub-subcontracts for portions of the Work, the Contractor shall remain directly responsible for sub-subcontractor's actions and remedies required. The Owner shall not be inconvenienced by conflicts with Subcontractors or their Sub-subcontractors. The Contractor shall make or cause to be made corrections to defective work and repairs in a responsive manner without regard to the outcome of conflict resolution between subcontracted parties.

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

Add Section 5.2.1.1 after Section 5.2.1:

§ 5.2.1.1 Not later than 14 days following date of issuance of Notice to Proceed or commencement of the Work, whichever occurs first, the Contractor shall furnish in writing to the Architect the Manufacturer/Subcontractor List consisting of a complete list of names of persons or entities proposed as manufacturers, fabricators, or material suppliers for the products, equipment and systems proposed for the Work and, where applicable, the name of the installing Subcontractor. The Contractor shall furnish evidence satisfactory to the Architect showing that any or all proposed Subcontractors are competent to execute the various parts of the Work covered by their subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.2 Mutual Responsibility

Delete Section 6.2.3 and replace with the following:

§ 6.2.3 If a Separate Contractor initiates legal or other proceedings against the Owner on account of damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if judgment or award against the

Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.4 (Delete the word "wrongfully" in this Section).

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

Add Section 7.1.4, 7.1.5, and 7.1.6:

§ 7.1.4 Overhead and profit applied to pricing of changes in the Work where the basis of payment for the change is cost plus overhead and profit may be stated separately or combined but, in either case, should distinguish between:

- .1 the amounts to be paid to the Contractor for Work performed by the Contractor with that Contractor's own forces and for materials purchased directly by the Contractor (not through a Subcontractor).
- . 2 the amounts to be paid to the Contractor and Subcontractor for Work performed by the Subcontractor with that Subcontractor's own forces and for materials or purchased directly by that Subcontractor (not through a Sub-subcontractor).

§ 7.1.5 The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based on the following schedule, unless otherwise stated in the AIA Document A 101 - 2017 Standard Form of Agreement Between Owner and Contractor:

- . 1 For extra Work completed by the Contractor with his own labor, not more than 15 percent shall be added as the allowance for overhead and profit.
- .2 For extra Work completed by Subcontractors of the Contractor, not more than 10 percent shall be added as the allowance for overhead and profit.
- .3 For Work deleted which would have been completed by the Contractor, with his own labor, not less than 10 percent shall be credited to the Owner as the allowance for overhead and profit.
- .4 For Work deleted which would have been completed by Subcontractors of the Contractor, not less than 5 percent shall be credited to the Owner by the Contractor as the allowance for overhead and profit.

§ 7. 1.6 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials, and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.

§ 7.3 Construction Change Directives

Revise the fourth phrase in Section 7.3.4 as follows:

§ 7.3.4 Change: " an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount...: to read:" ... a fixed percentage fee as provided in Section 7.1.5 above for total profit and overhead."

Revise the last sentence of Section 7.3 .8 as follows:

§ 7.3.8 Change to read: "When both additions and deletions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any."

ARTICLE 8 TIME

§ 8.3 Delays and Extension of Time

Delete from § 8.3.1 the following text: ... ", adverse weather conditions documented in accordance with Section 15.1.6.2".

Insert new Sections 8.3.2 and 8.3.3 as follows:

§ 8.3.2 If the progress or completion of the Work is delayed by any fault, neglect, act or failure to act on the part of the Contractor or any one acting for or on behalf of the Contractor, then the Contractor shall, in addition to all of the other obligations imposed by this contract and by law upon the contractor, and at no cost or expense to the Owner, work such overtime or require the appropriate sub-contractor to work such overtime as may be necessary to make up for all time lost and to avoid delay in the progress and completion of the work. The "premium" cost of all such overtime work shall be paid by the Contractor.

. I For the purposes of this Article, "sub-contractors" shall be deemed to be acting for and on behalf of the Contractor.

§ 8.3.3 Should the progress or completion of the Work be delayed by any fault, neglect, act or failure to act on the part of the Contractor or any one acting for or on behalf of the Contractor so as to cause any additional cost, expense, liability or damage to the Owner or any damage or additional cost or expense for which the Owner may or shall become liable, the Contractor shall and does hereby agree to compensate the Owner for, and to indemnify the Owner against, all such costs, expenses, liabilities and damages.

Renumber existing Section 8.3.2 as 8.3.4, and renumber existing Sections 8.3.3 as 8.3.5.

Add Sections 8.3.4.1, 8.3.4.2, and 8.3.4.3 to Section 8.3.4:

§ 8.3.4.1 Requests for extensions of time due to unusual adverse weather conditions occurring prior to completion of the roof and temporary or permanent building enclosure will be evaluated by the Owner when submitted by the Contractor in accordance with the requirements of Division 01 Section "Contract Modification Procedures."

§ 8.3.4.2 Extensions of Contract Time due to unusual adverse weather conditions shall not entitle the Contractor to claims for cost due to extended project overhead.

§ 8.3.4.3 If the Owner's performance is delayed at any time by Force Majeure (as hereinafter defined), the time for such performance by Owner or acceptance of Goods and/or Services will be equitably adjusted by allowing additional time for performance equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of Owner.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.2. Schedule of Values

Modify Section 9.2 to add "The schedule of values of the various portions of the Work shall be submitted on AIA from G703 and shall be filled out in full" at the end of the section.

§ 9.3 Applications for Payment

Add Section 9.3.1.3 to Section 9.3.1:

§ 9.3.1.3 The Contractor shall submit with each Application for Payment a completed Statement of Sales Tax Paid and Minority Business Enterprise documentation in a form acceptable to the Owner.

Add Sections 9.3.2.1 through 9.3.2.4 to Section 9.3.2:

§ 9.3.2.1 In requesting payment for materials stored on or off the site, the Contractor shall submit with his Application for Payment the following:

- .1 an itemized list of the stored material prepared in sufficient detail to identify the materials and their value. Include an accounting for new items stored, paid items that continue in storage, and items previously stored and since incorporated in the Work.
- .2 evidence such as bills of sale or such other proof as may be requested by the Architect to substantiate that the materials listed have been paid for by the Contractor, or, for materials stored at the site only, a notarized statement from the materials supplier stating that the materials will become the property of the Owner upon payment by the Owner to the Contractor.

§ 9.3.2.2 For material stored off the site, the Contractor shall additionally submit with his Application for Payment the following:

- .1 evidence that the materials are stored at the location previously agreed to in writing as provided by Section 9.3.2 of the General Conditions. No payment will be made for material stored off the site until the storage location has been agreed upon in writing. No payment will be made for material stored more than 50 miles from the Project site.
- .2 evidence that the storage location is bonded in a manner satisfactory to the Architect.
- .3 evidence that the materials are insured while in storage and while in transit to the site.
- .4 evidence that transportation to the site will be provided by the Contractor.

§ 9.3.2.3 Stored materials may be reviewed in their storage location by the Architect.

§ 9.3.2.4 Contractor shall reimburse the Owner for the Architect's cost for inspections of off-site stored materials, to include his Time (travel, site observation, and office-related duties) per the hourly rate established by the fee/rate schedule attachment to Owner-Architect Agreement), the cost for Engineering Consultants if their services are needed, and will also include travel expenses at IRS approved travel expense rate but no less than \$0.50 per mile from base of operations office to the Project site or storage site and back. In no case will the charges be less than the minimum set at \$500.00 per inspection.

§ 9.8 Substantial Completion

Add the following section after Section 9.8.1:

§ 9.8.1.1 Substantial Completion shall also include final approval for occupancy and use by authorities having jurisdiction.

Add Sections 9.8.2.1 and 9.8.2.2 to Section 9.8.2:

§ 9.8.2.1 The Architect shall be entitled to rely upon the Contractor's comprehensive list of items to be completed or corrected in conjunction with the Architect's inspection to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amount paid to the Architect for preparation of such comprehensive list of items if such preparation is required in order to facilitate the Architect's determination of Substantial Completion.

§ 9.8.2.2 The Architect will review the general condition of the Work and the Contractor's comprehensive list prior to the Architect's inspection to determine whether the nature or scope of

work left to be completed or corrected will preclude immediate and full owner occupancy, and will not proceed with inspection for Substantial Completion. but will reschedule the inspection at such time that the Contractor has indicated that the work remaining to be completed or corrected is consistent with the definition of Substantial Completion.

Add Section 9.8.3.1 to Section 9.8.3:

§ 9.8.3.1 Except with the consent of the Owner, the Architect will perform no more than two (2) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amount paid to the Architect, including normally reimbursable expenses, for any additional inspections.

§ 9.10 Final Completion and Final Payment

Add the following to Section 9.10.2:

"The Contractor shall furnish such evidence as may be necessary to show that out of state subcontractors or suppliers have fully met the requirements of payment of taxes as established in the law of the State or local subdivision thereof which may be in effect at the time of final payment. The Owner will require the submission of such proof or evidence before final payment will be approved or made. The forms for release shall be the current authorized editions AIA G706 and G706A."

Add Section 9.10.2.1 to Section 9.10.2:

§ 9.10.2.1 Except with the consent of the Owner, the Architect will perform no more than one() inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amount paid to the Architect, including normally reimbursable expenses, for any additional inspections.

Add the following section to Section 9.10.3:

§ 9.10.3.1 Owner's Option Final Payment: If at the time final completion is scheduled there are remaining uncompleted items, the contract may be closed and contract closeout completed, an amount equal to 250 percent of the value of each item as determined by the Architect shall be withheld for these items, as value to the Owner to provide for the Owner's completion of the work and related costs for Owner's and Architect's additional services.

Add the following Sections .5, .6, and .7 to Section 9.10.4:

- .5 Claims for Indemnification;
- .6 Claims about which the Owner has given the Contractor written notice;
- .7 Claims arising after final payment

Add Section 9.11:

§ 9.11 Costs for Additional Inspections

§ 9.11.1 The Architect's costs for additional inspections will include his Time (Travel, Site Visitation and Office) at the rate established in the fee/rate schedule attachment to the Owner Architect Agreement, the cost for Engineering Consultants if their services are needed, including their travel expenses at IRS approved Travel Expense Rate but no less than \$0.50 per mile from base of operations office to the project site and back. In no case will the charges be less than the minimum set at \$500.00 per inspection.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.2 Safety of Persons and Property

Add Section I 0.2.2.1 after Section I 0.2.2:

§ 10.2.2.1 In the event that review, inspection or other action by regulatory agencies or other parties results in the imposition of fines, fees, or other costs due to the failure of the Contractor to comply with said applicable laws, ordinances, rules, regulations and lawful orders, the Contractor shall hold harmless the Owner, the Architect, and Owner's separate contractors, if any, from all consequences arising from the Contractor's noncompliance.

§ 10.4 Emergencies

Add the following sentence to Section I 0.4:

"Nothing in this section shall be construed as relieving the Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning, and the close supervision of the Work as required under the Contract, could have been foreseen or prevented."

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

Add the following subparagraphs to 11.1.1

§11.1.1.1 Insurance will protect the Contractor from claims which may rise 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 including claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project.

§11.1.1.2 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis, including the following. When in conflict with Exhibit A Insurance and bonds, the most benefit to Owner shall apply.

1. Premises Operations (including X, C, and U coverage's as applicable).
2. Independent Contractors' Protective.
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provisions for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles.
7. Broad Form Property Damage, including Completed Operations.

§11.1.1.3 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of

coverage's required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.1.4 The insurance required by Article 11 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater.

§11.1.1.5 The Contractor shall maintain, throughout the life of the Contract, insurance satisfactory to the Owner providing not less than the following minimum coverage:

Public Liability Insurance:

- A. Comprehensive General Liability Insurance-This is the basic insurance which covers the Contractor for his negligent acts, errors, and omissions.
- B. Contractor's Protective Liability Insurance-This insurance protect a Contractor from Liability arising from the negligent acts of his subcontractors.
- C. Blanket Contractual Liability Insurance-This is an extension of the regular general liability policy to cover any written contract entered into by the insured contractor.
- D. Completed Operations Liability Insurance-This form of insurance extends the time limit of the general liability policy to cover claims that may arise after work has been completed and turned over to the Owner.
- E. General Commercial Liability (Claims Made): Automobile Liability (any auto, hired autos, non-owned autos); Excess Liability (umbrella form); Worker's Comp. and Employers' Liability:
 - 1. Commercial General Liability:
 - a. Each Occurrence-\$1,000,000
 - b. Damage to Premises (each occurrence)-\$500,000
 - c. Medical Exp. (any one person)-\$15,000
 - d. Personal and Adv Injury-\$1,000,000
 - e. General Aggregate-\$2,000,000
 - f. Products-comp/op agg-\$2,000,000
 - 2. Automobile Liability-Combined Single Limit-\$1,000,000
 - 3. Umbrella Liability:
 - a. Each Occurrence-\$5,000,000
 - b. Aggregate-\$5,000,000
 - 4. Workers Compensation and Employers' Liability (per statute):
 - a. Each Accident-\$1,000,000
 - b. Disease-each employee & policy liit-\$1,000,000
 - 5. Builder's Risk: \$900,000/\$1,000 ded.
- F. XCU Coverage: The certificate of insurance shall state that the XCU exclusions have been eliminated.

Add the following to Section 11.1.2: "The bond shall be in the amount of 100% of the Contract amount."

Add the following subparagraphs to Paragraph 11.1:

§11.1.5 If a Bond (or Bonds) is required by the Owner, each Bond shall provide either in the body of the Bond or by appropriate endorsement (Rider) to the Bond that: This obligation shall remain in full force and effect for any and all duly authorized modifications of said Contract and that may hereinafter be made, except that no change will be made which increases the total of the Contract Sum more than twenty percent in excess of the original Contract Sum without notice to the Surety.

§11.1.6 If the insurance is written on the Comprehensive General Liability policy form, the Certificates shall be ACCORD Form 25S, accompanied by a completed AIA Document G715, Instruction Sheet and Attachment for ACCORD Certificate of Insurance.

§11.1.7 Each policy shall provide EITHER IN THE BODY OF THE POLICY OR BY APPROPRIATE ENDORSEMENT (RIDER) TO THE POLICY, that such policy cannot be altered or canceled in less than 30 consecutive calendar days after receipt by the Owner of such written notice.

§11.1.8 The Contractor shall furnish a certificate of Insurance certifying that the insurance requirements, as set forth herein, have been included in the insurance policies. This Certificate of Insurance shall state the amounts of insurance and shall contain the clauses set forth herein. The Certificate of Insurance must be approved by the Owner prior to the commencement of the Work. The form of the certificate shall be AIA G715.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.2 Correction of Work

Add Section 12.2.2.1.1 to Section 12.2.2.1:

12.2.2.1.1 Leakproof Envelope Provision: The one-year period for correction of Work shall be extended to a two-year period for all exterior envelope elements of the Work should one or more fail to serve as a leakproof water and/or air barrier. The Contractor's responsibility under this Section shall extend to the repair of all damage to the building and building contents resulting from such failure.

Delete the words "one-year" from Sections 12.2.2.2 and 12.2.2.3.

Add Section 12.2.2.4 to Section 12.2.2:

12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance of the Work of the Contractor.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

Add the following sentence to the end of Section 12.3:

"The acceptance of nonconforming Work by the Owner shall be by written Change Order or Construction Change Directive, signed by the Owner's authorized representative. No person has authority to accept nonconforming work except the Owner."

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

Delete Section I 4.4 and all subparts and replace with the following:

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 to the extent they relate to the Work terminated and enter into no further subcontracts and purchase orders.

§ 14.4.3 If the Owner terminates the whole or any portion of the Work pursuant to Section 14.4, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Section 14.4.4, plus a markup of 10 percent for profit and overhead on the actual fully accounted costs recovered under Section 14.4.4; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

§ 14.4.3.1 After receipt of a notice of termination for convenience, the Contractor shall submit to the Owner its termination claim in the form and with certification prescribed by the Owner. Such claims shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, it may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Owner may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination.

§ 14.4.4 If the Owner terminates the whole or any portion of the Work pursuant to Section 14.4, the Owner shall pay the Contractor the amounts determined by the Owner as follows:

- .1 an amount for supplies, services, or property accepted by the Owner pursuant to Section 14.5.1.6 or sold or acquired pursuant to Section 14.5.1.7 and not heretofore paid for, and to the extent provided in the Contract such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract appropriately adjusted for any saving of freight or other charges;
- .2 the total of the cost incurred in the performance of the Work through the date of termination including initial costs and preparatory expense allocable thereto but exclusive of any costs attributable to supplies or services paid or to be paid for under Section 14.4.4.1; and
- .3 provided, however, that neither the Owner nor the Design Consultant will be liable for payments to subcontractors pursuant to Section 14.4.4.2 unless each subcontractor

contains termination provisions identical to those set forth in Article 14. The Owner and the Design Consultant will not be liable to the Contractor or any of its subcontractors for any costs associated with termination if the subcontract of the party involved does not include the proper termination clauses.

§ 14.4.5 In arriving at any amount due the Contractor pursuant to Section 14.4. there shall be deducted the following:

- . 1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim which the Owner may have against the Contractor;
- .3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and
- .4 the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold pursuant to the provision of Section 14.5.1.7 and not otherwise recovered by or credited to the Owner.

§ 14.4.6 The total sum to be paid to the Contractor and Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Section 14.4.4, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Section 14.5.1. 7.

Add Section 14.5 as follows:

§ 14.5 General Termination for Convenience Provisions

§ 14.5.1 After receipt of a notice of termination for convenience from the Owner, pursuant to Section 14.4, and except as otherwise directed by the Owner, the Contractor shall:

§ 14.5.1.1 stop work under the Contract on the date and to the extent specified in the notice of termination;

§ 14.5.1.2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

§ 14.5.1.3 terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;

§ 14.5.1.4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

§ 14.5.1.5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts with the approval or ratification of the Owner, to the extent may require or ratification shall be final for all the purposes of this Article;

§ 14.5.1.6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:

- (1) the fabricated or unfabricated parts, work in process, partially completed supplies

- and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and
- (2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;

§ 14.5.1.7 use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Section 14.5.1.6; provided, however, that the Contractor:

- (1) shall not be required to extend credit to any buyer, and
- (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;

§ 14.5.1.8 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

§ 14.5.1.9 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

§ 14.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all its books, records, documents, and other evidence bearing cost on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

§ 14.5.3 If the termination for convenience, pursuant to Section 14.4, be partial, the Contractor may file with the Owner a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Section must be asserted within three (3) months from the effective date of the notice of termination.

§ 14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Section 14.4.

§ 14.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1.5 Claims for Additional Time

Add Sections 15.1.6.3, 15.1.6.4, and 15.1.6.5 after Section 15.1.6.2:

15.1.6.3 Claims for increases in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including,

where appropriate, a revised construction scheduled indicating all the activities affected by the circumstances forming the basis of the Claim.

15.1.6.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor, or for delays not affecting tasks not identified as critical tasks affecting the date of completion of the Work.

15.1.6.5 The Contractor has the option to purchase such insurance and riders to his insurance (Inland Marine Floater policies to Builders Risk Insurance to cover the following potential losses: Theft, Business Interruption, Extra Expense, Installation, Contractors Equipment) as he deems prudent to cover possible losses due to acts of God (force majeure) including loss of income and financial damages due to loss of income caused by delays in construction from a covered peril. This option shall be the Contractor's sole remedy for damages not a result of Owner, Architect, Contractor or their agents' actions, omissions, or failures to take action. The Contractor agrees to make no claim for damages for delay in the performance of this Contract and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided under the change order provisions of Article 7.

Add Article 16 as follows:

ARTICLE 16: LIQUIDATED DAMAGES

§ 16.1 The Owner and Contractor recognize that time is of the essence to this Contract, and that a delay in achieving Substantial Completion or Final Completion is a breach and will necessarily cause damages to the Owner. Such damages include but are not limited to:

- .1 Delayed or diminished use of public facilities
- .2 Inconvenience to students, staff and public
- .3 Increased inspection, oversight and administrative costs to the Owner
- .4 Diversion of the Owner's employees from other tasks and projects
- .5 Increased and extended project overhead
- .6 Inefficiencies and loss of productivity

§ 16.2 All parties acknowledge that said damages are likely to occur but would be difficult to ascertain or determine, and that a legal proceeding to prove such damages would be time consuming and expensive. Therefore, in the event of delayed performance the following amounts will be charged against the Contractor, as liquidated damages and not as a penalty:

- .1 The amount of \$500 per calendar day for failing to meet the Substantial Completion Date, calculated until substantial completion is actually achieved; and
- .2 The amount of \$250 per calendar day for failing to meet the Final Completion Date, calculated until final completion is actually achieved.

§ 16.3 The above amounts for liquidated damages are separate and cumulative. They are calculated concurrently in the event Substantial Completion is not achieved until after the specified Final Completion Date. All parties agree that said liquidated damages are a reasonable estimate of the damages to Owner caused by delayed performance and that they are not a penalty.

§ 16.4 The Owner may withhold liquidated damages from any payment to Contractor. Making final payment shall constitute a waiver of the Owner's right to liquidated damages not withheld unless the right to assess liquidated damages is specifically reserved in writing by the Owner. The Owner's entitlement to liquidated damages is specifically reserved in writing by Owner. The Owner's entitlement to liquidated damages shall not be considered a "Claim" subject to the time limitation for asserting Claims, but rather accrues automatically upon the Contractor's failure to meet the Substantial Completion Date and/or Final Completion Date.

§ 16.5 Liquidated damages shall not be assessed for the Contractor's delayed performance if and

to the extent the delay is due to acts or omissions of the Owner or other contractors on the project, or to other events beyond the Contractor's control. Provided, however, that the contract provides a procedure by which the Contractor may make a Claim for an increase in the Contract Time, and it is Contractor's responsibility to follow the Claim procedure in a timely manner in order to obtain additional time to perform¹. Provided further, that failure by the Contractor to timely Claim and obtain additional time under said contract procedure constitutes a waiver, in which case the Owner shall be entitled to liquidated damages for delayed performance without any need for the Owner to establish that the Contractor was responsible for the delay.

§ 16.6 The Owner's entitlement to liquidated damages from Contractor shall be governed by this liquidated damages provision and shall not be affected by or offset by the Owner's assessment of liquidated damages against any other contractor.

§ 16.7 The parties acknowledge that this liquidated damages provision is not intended to apply to all additional costs incurred by Owner as a result of breach or delay. Specifically, this liquidated damages provision does not apply to additional costs incurred by Owner for correction of defective work or completion of the construction contract; additional legal, design professional and construction management costs resulting from breach or delay; and any claims by other contractors resulting from breach or delay. Such damages, Losses and expenses are likely to be ascertainable in the event of a breach are thus outside the scope of this liquidated damages provision. The parties agree that the Owner's right recover liquidated damages for delay is in addition to, and not in lieu of recovery of such ascertainable items of damages.

§ 16.8 The Owner's right to liquidated damages shall not be affected or waived by the Owner's termination of the contract upon material breach by the Contractor, nor by the Owner's permitting the Contractor to continue and finish the work or any part thereof after the expiration of the specified completion dates."

Add Article 17 as follows:

ARTICLE 17: CONFIDENTIAL INFORMATION

§ 17.1 Contractor shall not disclose any Confidential Information as hereafter defined. "Confidential Information" shall consist of (a) any information pertaining to students or students' official records; (b) any information pertaining to personnel records of Owner employees; (c) any information pertaining to designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by Owner to Contractor in connection herewith, or procured, developed, produced, manufactured or fabricated by Contractor in connection with Contractor's performance hereunder (the substance of clause (c) is hereafter referred to as "Project Information"); and (d) any information required to be kept confidential by law. Confidential Information may be disclosed as required by law. As used in this section, "required by law" shall include disclosures compelled by lawful subpoena, government regulation, court order, or demand pursuant to North Carolina Public Records Law, or any other lawful process; provided, however, that immediately upon receipt of any such subpoena, order or demand, Contractor shall notify Owner of the impending disclosure of records to afford Owner an opportunity to avail itself of legal process to prevent the disclosure or to seek confidential treatment of the disclosure.

§ 17.2 Security. Contractor's shall maintain commercially reasonable security measures in place to help protect against the loss, misuse, and alteration of Confidential Information.

§ 17.3 Additional Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, its and directors, officers, managers, employees and agents, from all suits, claims, costs, damages and other liabilities, including reasonable attorneys' fees as incurred by counsel of Owner's choice, relating to or arising from (a) Contractor's failure to maintain the security

and integrity of Confidential Information and (b) any claim for infringement of any copyright, trade secret, trademark, tradename, service mark, patent, or other law or regulation concerning intellectual and/or proprietary property rights.

§ 17.4 Effect of Termination and Orderly Transition. Upon expiration or notification of termination of this Contract for any reason, Contractor will cooperate in good faith with Owner to provide for an orderly transfer of any Confidential Information to Owner ("*Orderly Transition*") and according to the terms of this section:

- a. Scope of Work for Orderly Transition. Within 30 days of notification by Owner that this Contract is being terminated, the parties will create and execute a scope of work document detailing tasks, the responsible parties for individual tasks, and timeframes for completion of tasks necessary to complete an Orderly Transition. The final, executed Orderly Transition scope of work shall be incorporated into this Contract and become subject to its terms. Contractor's failure to a) cooperate in developing the Orderly Transition scope of work b) execute an Orderly Transition scope of work; or c) abide by the executed Orderly Transition scope of work shall be deemed a material breach of the Contract Documents.
- b. Time Frame. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor shall continue to perform under the Contract while Owner migrates its Confidential Information in the Orderly Transition process. Contractor agrees that, as part of the Orderly Transition process and within the specified time frame, it will transfer to Owner all of the Confidential Information provided to Contractor by Owner pursuant to this Contract. Contractor will provide Confidential Information in a commercially reasonable format as agreed in the Orderly Transition scope of work at no additional cost.
- c. Destruction of Confidential Information after Orderly Transition. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor agrees that after returning all Confidential Information to Owner pursuant to paragraph (b) above it will destroy all remaining copies of Confidential Information and back-up Confidential Information in its possession, contained in or on any medium (such as a storage area network or "SAN") or as may be stored offsite, within 30 days of completion of Orderly Transition. Contractor shall provide Owner with a detailed summary of the destruction process and standards to be utilized by Contractor with respect to the electronic Confidential Information and Owner shall approve such process and standards prior to Contractor commencing such destruction. Provided, Contractor may retain copies of any Project Information to the extent it does not contain components of sensitive public security plans or information as described under NC General Statute § 132-1.7.

EXHIBIT A - INSURANCE AND BONDS

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

Add the following to the end of Section A.3.1.1: Certificates shall list the Owner as Union County Public Schools, Monroe, NC 28112. The Contractor shall furnish one copy of each Certificate of Insurance herein required attached to each copy of the Agreement, plus three additional copies of each Certificate of Insurance herein required, which shall specifically set forth evidence of all coverage required under the Contract Documents. The Contractor shall further furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Add Sections A.3.1.4 and A.3.1.5 to Section A.3.1 after Section A.3.1.3:

§ A.3.1.4 Should the Contractor have any outstanding claim against his/her current insurance policies, he/she shall increase the dollar amount of insurance coverage above that specified by the dollar amount of the outstanding claim.

§ A.3.1.5 If the insurance is written on a Commercial General Liability policy form, the certificates shall be ACORD form 25, completed and supplemented in accordance with AIA Document 0715 - 2017, Supplemental Attachment for ACORD Certificate of Insurance 25.

In Section A.3.2.2.1, insert the phrase "five hundred thousand dollars" and the number "500,000," respectively, in the first and second blank spaces so as to read: " ... not less than five hundred thousand dollars (\$500,000) each occurrence "; insert the phrase "one million dollars" and the number "1,000,000," respectively, in the third and fourth blank spaces so as to read: " ... one million dollars (\$1,000,000) general aggregate "; and insert the phrase "one million dollars" and the number "1,000,000." respectively, in the fifth and sixth blank spaces so as to read: " ... one million dollars (\$1,000,000) aggregate for products-completed operations hazard.

§ A.3.2 Contractor's Required Insurance Coverage

Add Sections A.3.2.2.3 and A.3.2.2.4 after Section A.3.2.2.2:

§ A.3.2.2.3 The Contractor's Commercial General Liability policy under Section A.3.2.2 shall:

- .1 Be endorsed to have the General Aggregate apply to this Project only.
- .2 Include coverage sufficient to meet the obligations in AIA Document A201-2017 under Section 3.1.8.
- .3 Include coverage for Premises Operations (deleting X C or U exclusions), Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, and Broad Form Property Damage.

§ A.3.2.2.4 Products and Completed Operations insurance shall be maintained for a minimum period of at least one year after either 90 days following Substantial Completion or final payment, whichever is earlier.

In Section A.3.2.3, insert the phrases "and hired" and "five hundred thousand dollars," and the number "500,000," so as to read: "Automobile Liability covering vehicles owned, and hired and non-owned vehicles used, by the Contractor, with policy limits not less than five hundred thousand dollars (\$500,000) per accident "

Delete the period at the end of Section A.3.2.5 and add:

" ... including coverage for private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project."

§ A.3.3 Contractor's Other Insurance Coverage

Add an "X" in the box beside Section A.3.3.2.1.

Add Section A.3.3.2.1.1 to Section A.3.3.2.1

§ A.3.3.2.1.1 The insurance required by Section A.3.3.2.1 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Section 11.3.

Delete Section A.3.4 in its entirety and insert the following new Section A.3.4:

§ A.3.4 Performance Bond and Payment Bond

Upon execution of the Contract Documents, the Contractor shall furnish to the Owner a Performance Bond and a separate Labor and Material Payment Bond, acceptable to the Owner and underwritten by a surety authorized to do business in North Carolina, each in an amount equal to 100 percent of the Contract Sum for each bond. The bonds shall guarantee the Contractor's faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall remain in force until the Work has been completed and accepted by the Owner, the provisions of all guarantees required by these Contract Documents have been fulfilled, and the warranty periods and period for correction of the Work have expired, or the period for filing mechanics' liens has expired, whichever occur latest, after which time the bonds shall lapse. The Contractor shall bear all costs in connection with the bonds as a part of the Contract. One executed copy of each bond shall be attached to each executed copy of the Contract Documents prior to the execution of the Contract Documents by the Owner.

- . 1 These bonds shall be furnished to the Owner in the "Standard Form of Performance Bond and Labor and Material Payment Bond", AIA Document A312, latest edition.
- .2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

AIA Document E203 - 2013: Building Information Modeling and Digital Data Exhibit

ARTICLE 1: GENERAL PROVISIONS

Replace the word "Parties" with "Contractor" in Section 1.2

Delete Section 1.4.8:

Re-number Section 1.4. 9 as Section 1.4.8.

Re-number Section 1.4.10 as Section 1.4.9.

Re-number Section 1.4.11 as Section 1.4.10.

Re-number Section 1.4.12 as Section 1.4.11.

ARTICLE 2: TRANSMISSION AND OWNERSHIP OF DIGITAL DATA.

Delete Section 2.2 and Section 2.2.1.

Re-number Section 2.3 as Section 2.2.

Re-number Section 2.4 and Section 2.3.

END OF DOCUMENT 00 73 00

BID SUBMITTAL -STIPULATED SUM-SINGLE PRIME

PROJECT: SUN VALLEY HIGH SCHOOL
IMPROVEMENTS
3-97360041

BIDDER'S CHECKLIST	
<input checked="" type="checkbox"/>	5% Bid Bond
<input checked="" type="checkbox"/>	Bid Submittal Form
<input checked="" type="checkbox"/>	Affidavit A or B
<input checked="" type="checkbox"/>	Identification of Minority Business Form
<input checked="" type="checkbox"/>	Contractor's Qualification Statement

Company Name: Hoss Contracting, Inc.
Business Address: PO Box 968, Monroe, NC 28111
License No. 77611

Bid Amount provided below is an all-inclusive total for a complete, turn-key project for the purpose for which it was intended and in accordance with specifications and drawings included herein. In the event a bidder fails to mark "Add" or "Deduct" for the cost of Alternate(s), Owner will presume the amount is an added cost.

Base Bid: \$ 221,500 (Includes \$30,000 Allowance Funds)

Alternate 1: \$ 39,800 Add/Deduct (circle one)

Alternate 2: \$ 56,000 Add/Deduct (circle one)

Alternate 3: \$ 369,100 Add/Deduct (circle one)

Unit Price 1: \$ 40.00 110 cubic yard
(Unsuitable Soil Excavation with off-site removal, replace with suitable off-site fill, compacted in place.)

Canopy Manufacturer: Tennessee Valley Metals

Subcontractors:

Company: <u>Purser Elect.</u>	Trade: <u>Electrical</u>	License: <u>6713-1</u>
Company: <u>Green Group</u>	Trade: <u>Landscaper</u>	License: <u> </u>
Company: <u>NA</u>	Trade: <u>Mechanical</u>	License: <u> </u>
Company: <u>NA</u>	Trade: <u>Plumber</u>	License: <u> </u>

Acknowledge Addenda: Addendum 1 ☒ Addendum 2 ☐ Addendum 3 ☐ Addendum 4 ☐

I, the proposer, am familiar with all aspects of the project as defined herein, fully licensed to perform the Work as described, and authorized to sign on behalf of the Company listed above.

Name: Hoss Hinson Title: President Date: 01-18-2023
Print Name Print Title

Signature: 

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 01-18-2023 Name of Authorized Officer: Hoss Hinson

Signature: _____

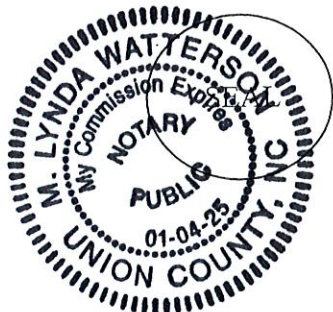
Title: President

State of NC, County of Union

Subscribed and sworn to before me this 18th day of January 2023

Notary Public M. Lynda Waterson

My commission expires 01-04-2025



Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina AFFIDAVIT A – Listing of Good Faith EffortsCounty of Union

(Name of Bidder)

Affidavit of Hoss Contracting, Inc.

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☐ 1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ 2 --(10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☒ 3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☒ 4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☐ 5 – (10 pts) Attended prebid meetings scheduled by the public owner.
- ☐ 6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ 7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☒ 8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ 9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☒ 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 01-18-2023 Name of Authorized Officer: Hoss Hinson

Signature: _____

Title: PresidentState of NC, County of UnionSubscribed and sworn to before me this 18th day of January 2023Notary Public M. Lynda WatersonMy commission expires 01-04-2025

I, Hoss Contracting, Inc.
(Name of Bidder)

Firm Name, Address and Phone #

Work Type

*Minority
Category

**HUB
Certified
(Y/N)

[illegible]

** HUB Certification with the state HUB Office required to be counted toward state participation goals.

The total value of minority business contracting will be (\$) 0

Expiration Date

12/31/2023

License No.

77611

North Carolina

Licensing Board for General Contractors

This is to Certify That:

Hoss Contracting, Inc

Monroe, NC

is duly registered and entitled to practice

General Contracting

Limitation: Unlimited

Classification: Building, Highway

until

December 31, 2023

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

01/01/2023

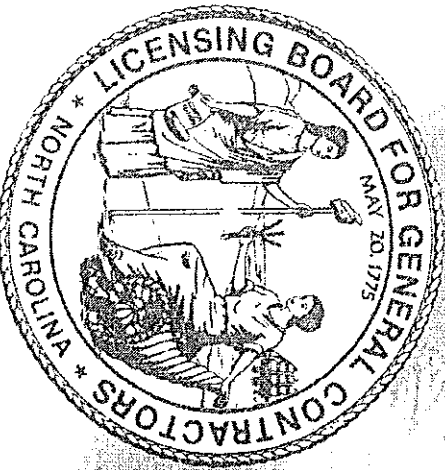
(This certificate may not be altered)

Sealberg

Chairman

C. Frank Wilson

Secretary-Treasurer



THE CINCINNATI INSURANCE COMPANY

Bid Bond

CONTRACTOR (Name, legal status and address):

Hoss Contracting, Inc.
P.O. Box 968
Monroe, NC 28111

SURETY (Name, legal status and principal place of business):

THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

OWNER (Name, legal status and address):

Union County Public Schools
201 Venus Street
Monroe, NC 28112

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

BOND AMOUNT:

Five Per Cent of the Amount Bid (5% of Bid)

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PROJECT (Name, location or address, and Project number, if any):

Sun Valley High School Improvements
5211 Old Charlotte Highway, Monroe, NC 28110

Project Number, if any:

3-97360041

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond the sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.


When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 18th day of January 2023


(Witness)


(Witness)

Hoss Contracting, Inc.

(Principal)  (Seal)

(Title) Hoss Hinson, President

THE CINCINNATI INSURANCE COMPANY

(Surety)  (Seal)

(Title) Deborah B. Gravelly, Attorney-in-Fact

**THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY**

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY and THE CINCINNATI CASUALTY COMPANY, corporations organized under the laws of the State of Ohio, and having their principal offices in the City of Fairfield, Ohio (herein collectively called the "Companies"), do hereby constitute and appoint

Robert C. Boyd; Deborah B. Gravely; Catherine G. Palmer; Harvey E. Brown, Jr.; Whitney V. Durepo;
Amy R. Riffe; Amy J. Zigler and/or Brandi G. Nyang

of Charlotte, North Carolina

their true and legal Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and deliver on behalf of the Companies as Surety, any and all bonds, policies, undertakings or other like instruments, as follows:

Any such obligations in the United States, up to
Twenty Million and No/100 Dollars (\$20,000,000.00).

This appointment is made under and by authority of the following resolutions adopted by the Boards of Directors of The Cincinnati Insurance Company and The Cincinnati Casualty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the President or any Senior Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company.

RESOLVED, that the signature of the President or any Senior Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Vice-President and the Seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, the Companies have caused these presents to be sealed with their corporate seals, duly attested by their President or any Senior Vice President this 16th day of March, 2021.



STATE OF OHIO)SS:
COUNTY OF BUTLER)

THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY

Stephen A. Ventre

On this 16th day of March, 2021 before me came the above-named President or Senior Vice President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, to me personally known to be the officer described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of said Companies and the corporate seals and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporations.



Keith Collett
Keith Collett, Attorney at Law
Notary Public - State of Ohio

My commission has no expiration date.
Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Vice-President of The Cincinnati Insurance Company and The Cincinnati Casualty Company, hereby certify that the above is the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Power of Attorney is still in full force and effect.

Given under my hand and seal of said Companies at Fairfield, Ohio, this 18th day of January, 2023



Ed H



AIA Document A305™ – 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

UCPS Facility Department

ADDRESS:

201 Venus Street
Monroe, NC 28112

SUBMITTED BY:

Hoss Contracting, Inc.

NAME:

Hoss Contracting, Inc.

ADDRESS:

PO Box 968
Monroe, NC 28111

PRINCIPAL OFFICE:

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

- ☒ Corporation
- ☐ Partnership
- ☐ Individual
- ☐ Joint Venture
- ☐ Other

NAME OF PROJECT: *(If applicable)*

Sun Valley High School Improvements
Project 3-97360041

TYPE OF WORK: *(File separate form for each Classification of Work)*

- ☒ General Construction
- ☐ HVAC
- ☐ Electrical
- ☐ Plumbing
- ☐ Other *(Please specify)*

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

§ 2. LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

North Carolina 77611

Limitation: Unlimited, Classification: Building, Highway

South Carolina CLG.121338 GC

BD5

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

North Carolina

§ 3. EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

Concrete

Footings

§ 3.2 Claims and Suits. *(If the answer to any of the questions below is yes, please attach details.)*

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

No

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

No

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

No

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? *(If the answer is yes, please attach details.)*

No

§ 5. FINANCING

§ 5.1 Financial Statement Exhibit E

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

- .1 Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);
- .2 Net Fixed Assets;
- .3 Other Assets;
- .4 Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes); and
- .5 Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

Carlini CPA PLLC
Jeff Carlini
6132 Creft Circle
Indian Trail, NC 28079

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

Yes

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

Yes

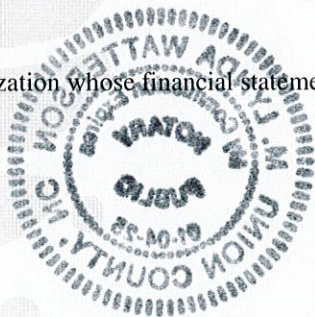


Exhibit A - Work In Progress 2023
Hoss Contracting, Inc

Project:	Owner:	Architect:	Contract Amount:	Completion Date	% Complete
Parkwood Middle School HVAC Replacement	The Union County Board of Education	ADW Architects	\$ 1,483,116.00	03/2023	70%
UCPS Parkwood Middle School Renovation	The Union County Board of Education	ADW Architects	\$ 3,565,807.00	03/2023	5%
Provision Church	Provision Church	None	\$ 3,115,834.00	09/2023	20%
Hinson's Office Building	Hinson Electric	None	\$ 462,243.00	08/2023	20%

Exhibit B - Major Projects Completed
Hoss Contracting, Inc

Project:	Owner:	Architect:	Contract Amount:	Completed:	Own Forces
Wilson Middle School Blding A Renovation	Charlotte Mecklenburg Board of Education	Little Diversified Architectural Consulting	\$ 1,592,050.00	08/2018	20%
Monroe Middle School Renovations	The Union County Board of Education	Morris-Berg Architects, Inc	\$ 2,445,700.00	08/2018	20%
UCPS Paving Renovations Various Locations	Union County Public Schools	None	\$ 453,804.00	07/2018	20%
Western Union Elementary School Renovations & Addition	The Union County Board of Education	Isaacs & Associates	\$ 1,470,841.00	07/2019	20%
Phillip O Berry Academy Track & Field Improvements	Charlotte Mecklenburg Board of Education	The FWA Group	\$ 2,564,500.00	08/2019	20%
Kennedy Middle School Replace Lift Station	Charlotte Mecklenburg Board of Education	Clark Nexsen	\$ 384,800.00	08/2019	20%
Monroe High School Addition and Renovations	The Union County Board of Education	Morris-Berg Architects, Inc	\$ 4,440,000.00	08/2019	20%
New Town Hall and Public Works Buildings	Town of Stallings North Carolina	Boomerang Design P.A.	\$ 3,126,000.00	01/2020	20%
Glennmark Pharmaceuticals	Glennmark Pharmaceuticals	Keri Engineering	\$ 2,308,173.00	02/2020	20%
David B. Weymer Sr. Recreation Center	Mecklenburg County	Boomerang Design P.A.	\$ 2,138,469.00	05/2020	20%
Richmond Community College Lindsey-Petris Expansion & Renovation	Board of Trustees of Richmond Community College	ADW Architects	\$ 5,549,754.87	11/2020	20%
Pageland New Administration Building	Town of Pageland, South Carolina	Davis & Floyd, Inc.	\$ 1,371,800.00	12/2020	20%
Dickson-Palmer Student Center Remodel	Wingate University	Credo Design Architects LLC	\$ 3,158,039.00	03/2021	20%
Piedmont High School Athletics Improvements	Union County Board of Education	Morris-Berg Architects, Inc	\$ 2,294,050.00	08/2021	20%
Myers Park Auto Shop Restoration	Charlotte Mecklenburg Board of Education	Boomerang Design P.A.	\$ 396,043.00	10/2021	20%
Southlake Presbyterian Church Worship Center Renovations	Southlake Presbyterian Church	Boomerang Design P.A.	\$ 538,818.00	08/2022	20%
Einstein Bros. Bagels Remodel	Wingate University	McMillian Pazden Smith Architecture	\$ 394,241.00	08/2022	20%
Indian Land Recreation Center Additions and Renovations	Lancaster County, North Carolina	Craig Gaulden Davis	\$ 5,483,622.44	08/2022	20%
Laurel Hill Community Center	Scotland County, North Carolina	Oakley Collier Architects, PA	\$ 2,698,650.00	11/2022	20%
Wingate University Indoor Baseball Facility	Wingate University	DH&A Architecture, PA	\$ 1,363,393.50	12/2022	20%

Exhibit C

Personnel Experience of Key Individuals

Hoss Hinson, President & Program Director

- *University of North Carolina at Greensboro
- * NC GC License # 77611
- *SC GC License # CLG.121338
- *Leed AP
- *OSHA Certified
- *21 Years of Experience

Matthew Richardson, Superintendent

- *OSHA Certified
- *Equipment Training
- *6 Years of Experience

John Lowery, Safety Manager

- *OSHA Certified
- *Equipment Training
- *14 Years of Experience

Exhibit D

Trade References

Hinson Electric, Inc.
2200 Stafford St. Ext.
Monroe, NC 28110
Heather Helms
704-283-1051

LB Mechanical Services LLC
PO Box 22750
Charlotte, NC 28222
Lynn Barnhill
980-230-9181

Griffin's Grading, Inc.
PO Box 459
Wingate, NC 28174
Jennifer Griffin
704-283-1946

Vann's Welding & Ornamental Work, Inc.
709 Sikes Mill Rd.
Monroe, NC 28110
Vann McManus
704-622-7300

Latham Door & Hardware
415 E. Windsor St.
Monroe, NC 28112
Daniel Latham
704-296-5518

Plumbing Masters, Inc.
5613 Poplin Road
Indian Trail, NC 28079
JR McVige
704-628-6863