



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

Northshore School District
3330 Monte Villa Parkway
Bothell, WA 98021

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



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INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for

3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, **6.3**

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, **5.4.2**, **11.5**, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal

Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5, 9.7, 14.1.1.3**
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7
Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5
Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, 10.3
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2, 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, **9.6.7**, **9.10.3**, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, **9.6.7**, **9.10.3**, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.2

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are complementary, 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~~, Contract and information reflected therein, 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 other documents such as 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. In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A133-2019), including exhibits (written amendments having precedence)
- .2 Any Supplementary Conditions
- .3 These revised General Conditions (A201-2017)
- .4 Any Special Conditions
- .5 Division 1 General Requirements
- .6 Specifications
- .7 Drawings (large-scale drawings having precedence over small-scale drawings, and written or computed dimensions having precedence over scaled dimensions)
8. Material and systems schedules

In the event that Work is shown on Drawings but not contained in Specifications, the Work as shown shall be provided at no change in the GMP or Contract Time, according to specifications to be issued by the Architect that are consistent with and reasonably inferable from the Work shown on the Drawings.

§ 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~~, Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights or rights to assignment it may otherwise have as to Subcontractors of any tier), (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. This Contract is a standard form created by the AIA with modifications that have been agreed between the parties. As such, the parties agree that neither party shall be considered the author of the Contract, and any ambiguities shall be neutrally construed.

§ 1.1.3 The Work

The term "Work" means the administrative procedures, construction and services required by the Contract Documents, whether completed or partially completed, and whether new construction or modification of existing structures, and includes all other demolition, abatement, disposal, 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. Where the Work requires construction that modifies or interfaces with existing structures, the Contractor shall take such actions as are necessary to ensure the Work is compatible with and appropriately interfaces with the as-built conditions of the existing structures.

§ 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.

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§ 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, Drawings, Specifications, studies, surveys, models, sketches, drawings, specifications, and other similar materials-materials through which the Work to be executed by the Contractor is described.

§ 1.1.8 Initial Decision Maker

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

§ 1.1.9 Project Manual

The Project Manual is a volume usually assembled for the Work that may include the bidding requirements, sample forms, the Agreement, these General Conditions, the Special Conditions, and other Contract Documents, including the Specifications for the Work.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 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~~, nor shall it relieve the Contractor's obligation to complete all of the Work when coordination between the Specifications and Drawings or coordination between subcontracts is required.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words not defined in the Contract Documents that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If the Contractor discovers that the Specifications, Drawings, or Project Manual fail to particularly describe the material or kind of goods to be used in any place or discovers an inconsistency or ambiguity between the Specifications, Drawings, or Project Manual with regard to the material or kind of goods, or an inconsistency or ambiguity arises internally within the Specifications, Drawings, or Project Manual with regarding to the material or kind of goods, then the Contractor shall make inquiry of the Architect as to what is intended and best suited. The material or kind of goods that a competent contractor, having participated in a preconstruction phase, would use in its place to produce first quality finished Work shall be considered a part of the Contract without adjustment to the GMP or Contract Time.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or articles and identified references to Sections in this document, (3) the titles of other documents published by the American Institute of Architects, Architects, or (4) published codes and standards.

§ 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. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. Specification and Drawing notes may include incomplete sentences where words such as "shall," "shall be," "the Contractor shall," and similar phrases shall be supplied by inference. The term(s) "approved," "or approved" and "as approved" mean approved by the Architect, and by any governing codes and officials, and by any quality standards specified as applicable to the work in question. "As directed" means as directed by the Architect or the Owner's Authorized Representative. The term "provide" means to furnish and install. The term "as required" or "as necessary" means as required by applicable codes or standards, and/or as may be required for proper completion of the work. Divisions and Sections included are listed in the "Table of Contents," together with the number of pages in each Section. The Contractor shall check its copies of the Specifications with the "Table of Contents" to ensure that they are complete.

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

§ 1.5.1 The Architect and the Architect's consultants ~~shall~~ shall, subject to any rights of the Owner, be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and ~~retain~~ retain, subject to any rights of the Owner, 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~~. Work under the Contract Documents and with respect to the Project. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. All copies of the Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Contractor may retain one record set. 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~~. transmission.

§ 1.6.2 Notice of Claims ~~and Claims~~ as provided in ~~Section 15.1.3~~ Article 15 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 (1) certified or registered mail, (2) e-mail delivery if the subject line of the e-mail is clearly marked as "NOTICE OF CLAIM" or "CLAIM," or (3) by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may 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. Any electronic files or information on computer media will be provided for the convenience of the Contractor and for informational purposes only. If for any reason a conflict occurs between information in

digital form and the stamped, signed documents, the information on the stamped, signed documents shall govern and be considered correct. Any additions or modifications to the information contained on, or generated from the electronic files or computer media made by anyone other than the Architect may result in adverse consequences, which the Architect can neither predict nor control. Neither the Architect nor the Owner shall be liable for any inaccuracy or incompleteness in information contained in an electronic copy other than PDF files of an Instrument of Service. Electronic files other than PDF files are not Contract Documents and cannot be relied upon as identical to the Contract Documents. Use of information contained in electronic files other than PDF files is at the Contractor's risk and without liability to the Architect or the Owner. The Contractor is required to execute the Architect's electronic document release to obtain the Instruments of Service other than hard copy and pdf files.

§ 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.~~ School District's Board of Directors or the Owner's authorized representative. The "Owner" does not include teachers, the school principal, staff, custodians, maintenance or safety workers, or other School District employees or consultants that may contact the Contractor or be present at the Project site. A WAIVER OF ANY PROVISION OF THE CONTRACT DOCUMENTS CAN ONLY BE MADE IN WRITING AND BY THE SCHOOL DISTRICT'S BOARD OF DIRECTORS. No other person is authorized to grant such waivers on behalf of the Owner. No officer, agent, representative, or employee of the Owner shall be personally responsible for any liability arising under this Agreement.

§ 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. The Owner shall secure and pay only for necessary environmental approvals, easements, assessments and related charges required for use or occupancy of permanent structures or for permanent changes in existing facilities, facilities, and those permits explicitly identified as the Owner's responsibility in the Contract Documents, including Section 3.7.1. The Contractor is responsible for securing and paying for all other required licenses and permits.~~

~~§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, architecture or engineering, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.~~

~~§ 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~~ may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor should assume that the locations of any underground or hidden utilities, underground tanks, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations, but the Contractor is responsible for making all utility location verifications. The Contractor is responsible for performing all investigation and location work to determine the precise locations of utilities. The Contractor shall not damage or interrupt utilities or utility services of any kind. The Contractor shall bear the risk of loss arising out of its Work which directly or indirectly damages or interrupts any utilities or utility services, or causes or contributes to damages of any nature.~~

~~§ 2.3.5 The Owner ~~shall~~ shall, upon written request, 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 reasonable 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. Additional copies may be obtained at the cost of reproduction and the Contractor shall allow a minimum of two (2) weeks following its written request for delivery of the documents and electronic files requested. Electronic files may be available from the Architect and may be subject to its terms. The Contractor will be responsible as a Cost of the Work for transmitting all electronic documents to Subcontractors of any tier. In addition, the Contractor will be responsible as a Cost of the Work for the duplication costs for Subcontractor bid packages (including those on which it bids) and will furnish, as a Cost of the Work, such copies of Drawings and manuals to the Owner and the Architect as are reasonably necessary.~~

§ 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 or materially 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 itself or 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~~ seven (7)-day period after receipt of notice from the Owner to commence and continue to make reasonable progress toward the 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.~~ In the event such deficiencies threaten the health or safety of the Owner's employees, students or occupants, or exist within fourteen (14) calendar days of the date on which the Owner is scheduled to begin to operate school at the Project, the Owner may immediately proceed to correct such deficiencies without notice and without awaiting expiration of the seven (7)-day cure period. In addition, the Architect and the Owner 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 and expenses 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.~~ the Owner or the difference shall be deducted from the Contract Sum via a deductive Change Order. 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. The right of the Owner to correct the Work pursuant to this Section shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. The Owner's exercise of its rights under this Section shall not adversely affect any warranties applicable to the Project.

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 bonded, and insured~~ 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.~~ Documents and submittals accepted pursuant to Section 3.12. The Contractor shall comply with any applicable requirements of the Office of the Superintendent of Public Instruction (OSPI).

§ 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.

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Contractor will cooperate with the Owner and Architect to create an environment of mutual respect and focus on the success of the Project. The Contractor will endeavor to promote harmony and cooperation among and between the Owner, the Architect, the Contractor, and other persons or entities employed by each of them, in order to further the interests of the Owner and effect prompt completion of the Project within the requirements of the Contract Time and GMP.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract and the GMP Amendment 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. By executing the GMP Amendment, the Contractor represents and acknowledges that the GMP will be reasonable compensation for all the Work, that it is performing with its own forces any percentage of Work specified in the Contract Documents (not including general conditions Work), that the Contract Time is adequate for the performance of the Work, and that it has carefully

examined the Contract Documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the physical labor, materials, equipment, goods, products supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor fully to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the GMP and shall not be the basis of a Claim.

§ 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 Drawings, Specifications, and other 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 and verify any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. 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 Owner and 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 Owner and 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, building codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner and the Architect may require. The Contractor shall comply with all applicable Federal, State, County and City laws, ordinances and regulations, and amendments, including, but not limited to, the latest applicable versions of:

1. International Building Code with State of Washington Amendments;
2. International Plumbing Code with State of Washington Amendments;
3. Uniform Plumbing Code;
4. International Mechanical Code;
5. National Electrical Code;
6. Washington State Energy Code;
7. Washington State Rules and Regulations for Barrier-Free Design;
8. Americans with Disabilities Act (ADA);
9. International Fire Code;
10. National Fire Protection Association Requirements; and
11. Federal and State Safety Codes as adapted and/or modified by State and Local Ordinances;
12. Washington Sustainable Schools Protocol (WSSP) to the extent that this Project receives any State of Washington funds or as otherwise required by the Contract Documents; and
13. Any applicable municipal code.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues any design errors or omissions or inconsistencies noted by the Contractor during this review, or clarifications or instructions issued by the Owner or the Architect 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 any Notices of Claims and 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 unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Owner and the Architect. If the Contractor performs any construction activity that it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or reports referenced therein without such notice to the Owner and the Architect, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction at no increase in the GMP.

§ 3.2.5 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents. The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall be responsible for inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory work having been completed and made satisfactory to receive the related Work. The Contractor shall also ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification shall constitute an acceptance of preparatory work, and a waiver of any later Claim or defect therein.

§ 3.2.6 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be included in the Project Manual or otherwise available for the convenience of Bidders but are not a part of the Contract Documents. While the Contractor may reasonably rely upon such investigation results, there is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. The Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location.

§ 3.2.7 The Contractor shall do no Work without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 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, assembly details, and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall review any such instructions and any construction or installation procedures specified in the Contract Documents, shall advise the Owner and Architect (1) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice, (2) if following the instruction or procedure will affect any warranties, or (3) if the Contractor objects to the instruction or procedure, and shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the GMP or Contract Time will be made. If the Contract Documents give specific instructions concerning construction means, methods, techniques, assembly details, 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 written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Contractor shall not move forward with that portion of the Work without further instructions from the Architect. 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 principals, agents, employees, Subcontractors of any tier 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. Subcontractors of any tier.

§ 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. Under no condition shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related

Work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times. The Contractor shall require its Subcontractors of any tier to be familiar with all aspects of the Contract Documents related to their Work. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its Work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification or the failure of the Contractor to inspect such portions of the Work shall constitute an acceptance of preparatory work and a waiver of any later Claim of defect therein.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings and Specifications. The Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (as a Cost of the Work and in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. The Contractor shall report to the Owner and the Architect known errors, omissions, or inconsistencies before commencing the Work. Any inspections performed by or on behalf of the Owner shall not be deemed an approval of the Work.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Contractor is responsible for coordination of all the Drawings related to specific locations. The Contractor shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work and to create and submit to the Owner an as-built survey and accurate utility as-builts for use by the Owner. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, storm, sewer, drains, grade and invert elevations.

§ 3.3.6 The Contractor shall maintain and provide to the Owner, an electronic, word processed daily report for each work day during the Contract Time, whether or not any Work is performed, and for each non-work day in which Work is performed on the site. The daily report must identify all activities performed related to the Work, including but not limited to numbers of workers by trade, equipment in use, inspections, and performance of Change Order and Construction Change Directive Work. The daily report shall be completed electronically on a form approved by the Owner. The Contractor shall electronically submit daily reports (via email) to the Owner and the Architect on each Monday covering the prior week.

§ 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. Unless stated otherwise in the GMP Amendment, to the extent that the Owner allows the Contractor to utilize the Owner's utilities, the Contractor shall install temporary meters to quantify the Contractor's required reimbursement to the Owner for those utilities.

§ 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 After the GMP Amendment has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only under exceptional circumstances described in and following the procedures of the Contract Documents. The written request must be submitted on the Owner's substitution form and include the specifications for the material or product and any proposed change in the GMP or Contract Time. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of

any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, that it has coordinated with affected Subcontractors, that the substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expend in reviewing a substitution request. Neither the Owner nor the Architect will be responsible for the performance of the substituted product.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Work, including observance of any badging, drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment and other rules governing the conduct of personnel at the Project site. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall ensure that all persons performing the Work comply with the Owner's tobacco-free policy, chemical use and weapons prohibition policies, and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. Neither the Contractor nor any of its Subcontractors of any tier shall utilize any employee at the site or permit any contact between children at the Owner's public schools and any employee who is a registered sex offender or who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable without change in the GMP or Contract Time. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section 3.4.3. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.3.1 No employees of either the Contractor or any of its Subcontractors of any tier shall harass, intimidate, have physical contact with, or engage in other verbal or physical conduct or communication of a sexual, intimidating or harassing nature with students or the Owner's staff, nor create an intimidating, hostile or offensive environment. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable at no change to the GMP or Contract Time. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.3.2 Any employees of the Contractor and Subcontractors shall be subject to a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 834, RCW 10.97.030, and RCW 10.97.050 and through the Federal Bureau of Investigation before the Contractor permits them to have such access to children. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The Owner shall provide necessary cooperation associated with the required record check. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two (2) years, the Owner or the Contractor may waive the requirement. The costs associated with the record check shall be included as part of the GMP. The Contractor shall represent to the Owner in writing that it has complied with this requirement.

§ 3.4.3.3 The Contractor shall develop and administer a system for maintaining site security and tracking all individuals with access to the Project site. All contractors, suppliers, and visitors who come onto school property shall be required to display an identification badge or sticker on their person (such as a hard hat sticker), which shall be provided by the Contractor as part of the GMP. The Contractor shall coordinate the distribution of badges or stickers, shall maintain a list of all contractors, suppliers, and visitors with permission to be on school property (including identifying any personnel required to have a background check pursuant to Section 3.4.3.1 above), and shall make such list available to the Owner or Architect upon request. All badges or stickers shall include a personal identifier

(such as a numerical designation), correlated with the Contractor's list of approved personnel and visitors, to allow the Owner or Architect to identify the contractor, supplier, or visitor.

§ 3.4.4 Prevailing Wages

§ 3.4.4.1 This Contract and the Project are subject to Chapter 39.12 RCW, Washington's Prevailing Wage Act. Pursuant to RCW 39.12, Washington's Prevailing Wage Act, no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" as determined by the Industrial Statistician of the Department of Labor and Industries. Analysis must be done on a trade classification basis for each worker to ensure that proper wages are paid. The schedule of the prevailing wage rates for the locality or localities where this Contract will be performed is attached to the executed Contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the bid date for the county in which the Project is located and are available at <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. A copy is available for viewing at the Owner's office and will be mailed upon request. The Contractor shall also keep a paper copy at the Project site. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing	Department of Labor and Industries
Address:	Prevailing Wage Office
	PO Box 44540
	Olympia, WA 98504
Telephone:	(360) 902-5335
Facsimile:	(360) 902-5300

§ 3.4.4.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries of the state, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

§ 3.4.4.3 The Contractor shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of Washington's Prevailing Wages Act or Chapter 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

§ 3.4.5 The Contractor shall comply with all applicable provisions of RCW 49.28 ("Hours of Labor").

§ 3.4.6 Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-62-054 et seq., the Contractor shall provide to the Owner and have copies available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project site. The Contractor shall not be entitled to an increase in the Contract Time or GMP arising from its failure or alleged failure to comply with this statute or regulation.

§ 3.4.7 Certified Asbestos-Free, Lead-Free, and Hazardous Material-Free Products: All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards, and shall also be free of all hazardous materials. At the completion of the Project, the Contractor shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this Section and shall also certify that materials and products incorporated into the Work are free of hazardous materials.

§ 3.4.8 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

§ 3.4.9 Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Contractor shall, if required in writing by the Owner or the Architect, furnish satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

§ 3.4.10 Apprenticeship.

§ 3.4.10.1 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.

§ 3.4.10.2 Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

§ 3.4.10.3 "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the Contractor and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.

§ 3.4.10.4 During the term of this Contract, the Owner may adjust the apprenticeship labor hour requirement upon its finding or determination that includes:

- .1 A demonstration of lack of availability of apprentices in the geographic area of the Project;
- .2 A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprenticeship participation;
- .3 Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300, 39.04.310 and 39.04.320;
- .4 Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
- .5 The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
- .6 Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.

§ 3.4.10.5 The Contractor shall report apprentice participation to the Owner at least quarterly, on forms provided or approved by the Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal including copies with any birthdates and social security numbers (and any other sensitive personal information) redacted so as such copies may be used to respond to any public records requests. The reports shall include:

- .1 The name of the Project;
- .2 The dollar value of the Project;
- .3 The date of the Contractor's notice to proceed;
- .4 The name of each apprentice and apprentice registration number;
- .5 The number of apprentices and labor hours worked by them, categorized by trade or craft;
- .6 The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
- .7 The number, type, and rationale for the exceptions granted.

§ 3.4.10.6 To comply with the changes to RCW 39.04.320 that are effective as of January 1, 2020, the following provisions also apply:

- .1 This Section 3.4.10 specifies that the 39.04.320 apprenticeship goals should be met;
- .2 The Owner shall provide a monetary incentive of One Thousand Dollars for meeting these goals;
- .3 The Contractor shall pay a monetary penalty of One Thousand Dollars for not meeting these goals;
- .4 The Owner is not in a position within existing resources to identify an expected cost value to be included in the bid associated with meeting these goals; and
- .5 Contractor and its Subcontractors are not required to exceed these apprenticeship utilization requirements.

§ 3.4.11 Certified Payrolls

§ 3.4.11.1 Contractor and its Subcontractors of all tiers shall submit certified payrolls in accordance with RCW 39.12.120.

§ 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 explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, 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. defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The requirements, including substitutions not properly approved and authorized, shall be defective. Unless such actions are caused by or are the responsibility of the Contractor, the Contractor's warranty excludes remedy for damage or defect caused by abuse, abuse by the Owner, alterations to the Work not executed or supervised by or through the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive Final Completion, Final Acceptance, and final payment.

§ 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. The Contractor shall secure, collect, assign, and deliver to the Owner any specific written warranties given by others and required by the Contract Documents. These warranties shall extend to the Owner all rights, claims, benefits and interests that the Contractor may have under express or implied warranties or guarantees against the Subcontractor, supplier or manufacturer for defective or non-conforming Work. Prior to furnishing the Owner with written guarantees and warranties, the Contractor shall provide copies to the Architect for review. The Contractor shall not permit such warranties to include limitations on the applicable Subcontractors, suppliers, and manufacturers' obligations to correct and replace, at their sole cost and expense, defective or non-conforming equipment and/or materials. Warranty language shall comply with the Contract Documents and shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment. The Contractor shall be responsible for any failure of the warranty language to comply with the requirements of the Contract Documents.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use all taxes, including sales, consumer, use, B&O, income, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, the GMP Amendment is executed, whether or not yet effective or merely scheduled to go into effect. The only taxes excluded from the GMP and separately reimbursable are Washington State Sales Taxes (WSST) on the Contract Sum. Tariffs are not reimbursable and shall not increase the reimbursable Contract Sum regardless of when implemented.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise explicitly 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 as part of the Contract Sum and as a Cost of the Work within the GMP any Project-specific permits, licenses, and inspection fees of governmental authorities having jurisdiction, including without limitation Subcontractor permits and fees, review and application fees for shop drawings, inspection and re-inspection fees, and renewal fees and penalties, 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. the Work. The Owner shall pay for, and the Contractor shall NOT include as a Cost of the Work, the cost of the building permit. The Contractor shall determine the cost for the building permit, submit evidence of such cost to the Owner, pick up payment for the building permit from the Owner, and directly deliver the Owner's payment to the appropriate permitting agency when picking up the building permit, all at no change in the GMP. The Contractor shall then deliver a receipt for the building permit to the Owner also at no change in the GMP. The Contractor shall not add or be entitled to any markup on the building permit.

§ 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. The Contractor shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies with jurisdictional authority necessary for completion of the Work. The Contractor shall keep the Owner informed of

communications from these authorities and utilities. The Contractor shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within thirty (30) days after issuance of the Notice to Proceed to the extent necessary for site access and, for other purposes, as soon as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work and will be responsible for, as part of the GMP, any renewals of and penalties arising from the building permit and other permits and governmental fees. The Contractor will be responsible for providing information and fees to the Department of Labor and Industries.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, codes, rules or regulations, or lawful orders of public authorities, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. 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 any soils reports available to the Contractor or 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 written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~fourteen~~ (7) 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.~~ GMP or Contract Time, or both, consistent with the requirements of the Contract Documents. 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. Any Claim of the Contractor arising from the Architect's determination or recommendation shall be made in accordance with the dispute resolution procedure in Article 15.~~ No increase to the GMP or the Contract Time shall be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to executing the GMP Amendment.

§ 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.~~ immediately notify the Owner and Architect by telephone call and in writing. 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 that may affect the human remains, burial markers, archaeological sites or wetlands 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~~ GMP and Contract Time, if any, arising from the existence of such remains or features ~~may~~ shall be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the ~~Contract Sum~~ GMP 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 made reasonable and timely written 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,~~ taxes except Washington State Sales Tax (WSST), 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~~ GMP but not in the allowances; and

- .3 whenever costs are more than or less than allowances, the ~~Contract Sum~~ GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between ~~actual~~ actual, reasonable costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent and Project Management

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

§ 3.9.1.1 The superintendent, project manager and field engineer shall be employees of the Contractor. The superintendent and field engineer, as well as appropriate Subcontractor supervisory personnel (foreman level and above for all Subcontractors working at the site), shall be assigned to the Project full-time and shall be present at the Project site whenever Subcontractors of any tier are present, which shall not be less than eight (8) hours per day, five (5) days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the Contract in accordance with the Contract Documents, or Substantial Completion is attained. The project manager shall be assigned to the Project for at least 12 hours per week and shall also regularly be at the Project site and attend progress meetings. All Project personnel shall have and utilize cellular telephones and email. Communication by facsimile shall not be permitted. After Substantial Completion, a qualified, experienced representative of the Contractor with authority to bind the Contractor shall remain on site full-time until Final Completion is attained. Similarly, appropriate Subcontractor supervisory personnel (foreman level or above) shall also be present at the Project site whenever Subcontractor work of any tier is being performed, whether before or after Substantial Completion. Neither the superintendent nor the Contractor's project manager or field engineer shall be changed without the approval of the Owner, which shall not be unreasonably withheld. The Contractor's superintendent shall not be employed on any other project during the course of the Work.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, prior to execution of the GMP Amendment, shall notify the Owner and Architect in writing of the name and qualifications of a proposed superintendent. Within 14 days project manager, superintendent, and field engineer. These individuals shall be consistent with any individuals identified during the procurement process. Within a reasonable time of receipt of the information, the Owner and the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent project manager, superintendent, and/or field engineer, or (2) requires additional time for review. Failure of the Owner and the Architect to provide notice within the 14-day period a reasonable time shall constitute notice of no reasonable objection.

§ 3.9.2.1 Prior to executing the GMP Amendment, the Contractor shall also furnish to the Architect and Owner:

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including all personnel identified in the Contractor's RFP response, the project manager, field engineer, superintendent, lead foreman, and any other management personnel that the Contractor intends to use on the Work. The chart shall identify any limits of authority for each person, including any limitation on his or her ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, Contract Time, and issues affecting quality of the Work. The chart shall also specify who is responsible for Shop Drawing review and submittal and as-built drawing maintenance.
- .2 Complete resumes, including all past and current projects, for the proposed project manager, the field engineer and the superintendent. The Owner intends to review the resumes and verify references, and it reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase in the GMP or Contract Time.
- .3 A list of telephone numbers for all key personnel of the Contractor and its principal Subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.

§ 3.9.3 The Contractor shall not employ a proposed ~~superintendent project manager, superintendent, and/or field engineer~~, to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the ~~superintendent project manager, superintendent, or field engineer~~ without the Owner's consent, which shall not unreasonably be withheld or delayed. However, the Owner shall have the absolute right, in its discretion and at any time, to require the Contractor to replace the project manager, superintendent, and/or any of the various assistants at no change in the GMP or Contract Time. The Contractor shall also have available for Work on site experienced, skilled workers, such as carpenters, laborers, and erection specialists, to perform Work as needed. The Contractor's Schedule of Values shall include as separate line items the cost of Contractor's project manager, superintendent, and field engineer.

§ 3.10 Contractor's Construction and Submittal Schedules; Meetings

§ 3.10.1 ~~The Contractor, promptly after being awarded the Contract, Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.~~ preliminary Contractor's construction schedule for the Work in accordance with Attachment 4 to the Agreement. Following execution of the GMP Amendment, the Contractor, after consultation with its Subcontractors, shall submit two (2) hard and color copies and an electronic copy of the Contractor's construction schedule consistent with the requirements of the Contract Documents. The Contractor shall also submit an updated schedule each month with its Application for Payment. The schedule shall contain detail appropriate for the entire 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; and (4) any other information required by the Contract Documents. 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 a minimum monthly as required by the conditions of the Work and Project. Neither the Owner nor the Architect have the responsibility to review the substance of the Contractor's construction schedule.

§ 3.10.1.1. The Contractor will be responsible for planning, scheduling, managing and reporting the progress of the Work in accordance with all of the specific methods and submittals described in the Contract Documents.

§ 3.10.1.2. The Contractor's construction schedule shall be prepared by a competent scheduler, and used by the Contractor to plan, prosecute, and coordinate the Work in an orderly and expeditious manner. The Contractor's construction schedule may be used by the Owner and the Architect to evaluate progress and status at the various stages of the Project, allocate funds consistent with the Schedule of Values, determine the impact of any changes to the Contract, and establish the basis for progress payments. Such review shall not constitute an approval or acceptance of the Contractor's construction means, methods or sequencing, or its ability to complete the Work in a timely manner. Neither the Owner nor the Architect are responsible for reviewing or accepting the substance or logic of the Contractor's construction schedule.

§ 3.10.1.3. The Contractor's construction schedule shall be based upon a critical path method ("CPM") analysis of construction and related activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work in accordance with the Contract and within the Contract Time. The schedule shall be in the form of a precedence diagram and activity listing, and shall be time-scaled. It shall include the Notice to Proceed date, the dates of interim milestones, the date(s) of Substantial Completion, and the date(s) of Final Completion in accordance with the Contract Documents. The Critical Path shall be clearly indicated on the Contractor's construction schedule. No more than 20% of the progress activities shall be on the critical path, and no more than 30% shall have less than five (5) days' float. The value of not more than 5% of the total activities shall exceed \$50,000. At the Architect's discretion, the Contractor may be required to prepare and submit an electronic spreadsheet (formatted in a manner compatible with MS Excel) that allocates the approved Schedule of Values to the appropriate schedule activities contained in the construction schedule. The time-scaled network diagram shall be summarized on a single sheet not to exceed 30" x 42". The schedule calendar shall be a work-day calendar that recognizes holidays observed by the local construction unions.

§ 3.10.1.4. The network diagram shall show in detail and in order the sequence of all significant activities, their descriptions, start and finish dates, durations, links, and dependencies, necessary to complete all Work and any separable parts thereof. Predecessor and successor reports identifying links and relationships shall be provided if requested by the Architect or Owner. The activity listing shall show the following information for each activity on the network diagram:

.1 Activity description;

- .2 Duration (not to exceed fifteen (15) working days);
- .3 Start and finish dates;
- .4 Total float time and free float time; and
- .5 Dates that Work must be performed and completed by other contractors to support the Work and the interfaces with such other contractors.

§ 3.10.1.5. A schedule for the purchase and receipt of items required for performance of the Work, identifying submittal and approval dates and showing lead times between purchase order placement and delivery dates, shall be integrated with the Contractor's construction schedule. The Contractor shall furnish the Architect with copies of all purchase orders and acknowledgments and fabrication, production, and shipping schedules for all major items on the critical path within ten (10) days of Contractor's receipt of each purchase order, acknowledgment or schedule. Neither the Architect nor the Owner shall be deemed to have approved or accepted any such material, or its schedule, nor deemed to have waived this requirement if some or all of the material is not received.

§ 3.10.1.6. Milestone completion dates shall be clearly defined on the Contractor's construction schedule. They shall include, at a minimum:

- .1 Notice to Proceed;
- .2 On-Site Start;
- .3 Trade Completions;
- .4 Any Phase Milestones;
- .5 Statutory Authorities Occupancy Approvals;
- .6 Substantial Completion;
- .7 Punch list Completion;
- .8 Dates of Commissioning; and
- .9 Final Completion.

§ 3.10.1.7. If abbreviations are used in the Contractor's construction schedule, a legend shall be provided to define all abbreviations.

§ 3.10.1.8. The construction schedule shall be prepared using a generally accepted and readily available scheduling software acceptable to the Owner; no other scheduling software shall be allowed. The progress schedules shall be submitted as both a paper copy and in native electronic format on a CD and by email, any of which must include data files that can be loaded onto the Owner's copy of the scheduling software and be capable of being printed.

§ 3.10.1.9. At each monthly meeting with the Owner, the Contractor shall submit (a) an updated Contractor's construction schedule (printed from the CPM and based on the CPM baseline schedule) accurately identifying the current status of the Work and showing the activities planned for the next month and (b) a report showing actual start and finish dates compared to the original CPM baseline from the previous month. The schedule shall show, among other detail, all Work activities numbered according to the CPM baseline schedule, any submittal or delivery activities with less than five (5) days' float, and any permitting, testing, or inspection activities by others. The updated Contractor's construction schedule shall display actual start dates and percent completion or actual finish dates if the activity is 100% complete. Any changes in logic or duration of the activities contained in the updated Contractor's construction schedule, insertion of new activities, or deletion of planned activities, shall be submitted in a separate report describing such changes.

§ 3.10.1.10. Within ten (10) days after receipt by the Architect, two copies of the Contractor's construction schedule will be returned to the Contractor with comments, following review by the Owner. Review by the Owner and Architect of the Contractor's construction schedule shall not constitute an approval or acceptance of the Contractor's construction means, methods, or sequencing, or its ability to complete the Work in a timely manner.

§ 3.10.1.11. The Contractor shall utilize and comply with the Contractor's construction schedule. The Contractor shall not be entitled to any adjustment in the Contract Time, the Contractor's construction schedule, or the GMP, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's construction schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any

delay that occurred during any time the Contractor has not timely submitted an updated construction schedule as required by the Contract Documents.

§ 3.10.1.12. Should the Contractor fail to meet any scheduled date as shown on the current Contractor's construction schedule, the Contractor shall, if requested, be required at its own expense to submit within ten (10) days of the request an updated Contractor's construction schedule at no cost to the Owner. If the Contractor's progress indicates to the Owner that the Work will not be Substantially Completed within the Contract Time or will not meet a scheduled date as shown on the construction schedule, the Contractor shall, at its own expense, increase its work force and/or working hours to bring the actual completion dates of the activities into conformance with the Contractor's construction schedule and Substantial Completion within the Contract Time. The Contractor shall reschedule and also submit a revised Contractor's construction schedule at its own expense within ten (10) days of notice from the Architect or Owner that the sequence of Work varies significantly from that shown on the Contractor's construction schedule showing Work to complete on original Contract Time with approved extensions. The Owner may withhold some or all of the progress payments until such time as the Contractor has provided an approved revised construction schedule in a form satisfactory to the Owner. Neither the Owner nor the Architect will be obligated to review the substance or sequence of the Contractor's construction schedule or otherwise determine whether it is correct, appropriate or attainable.

§ 3.10.1.13. In the event the Contractor is entitled to a change in the Contract Time, the adjustment to the Contract Time shall be limited to the change in the critical path of construction activities.

§ 3.10.1.14. Any float time to activities not on the critical path shall belong to the Project (i.e., the Contractor, the Owner and the Architect), and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and the final completion date shall belong to the Owner, and may be used by the Owner in determining if the Contract Time should be extended for changes in the Contract or for delays caused by the Owner. The Contractor will not be entitled to any adjustment in the Contract Time, the construction schedule, or the GMP, or to any additional payment of any sort by reason of the Owner's use of float time between the end of the final construction activity and the final completion date or by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's construction schedule.

§ 3.10.1.15. The Contractor shall allocate in the schedule of values separate line items within the Specified General Conditions in the amount of at least three percent (3.0%) of the Specified General Conditions for preparation and submittal of the Construction Baseline Schedule plus another at least three percent (3.0%) of the Specified General Conditions for preparation and submittal of the monthly Progress Schedule updates. The Contractor shall request payment for this line item with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Contractor fails to submit a satisfactory construction schedule or an accurate schedule update identifying accurately the current status of the Work, the Contractor shall not be entitled to any payment for scheduling for that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall, at the Owner's option, be permanently deducted from the GMP by Change Order.

§ 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 and keep current a submittal schedule for the Owner's and the Architect's review. The Owner's and 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 Owner and the Architect reasonable time to review submittals in accordance with the Specifications and submittal procedures. The Contractor shall contemporaneously provide the Owner with a copy of all submittals and should expect a response time of at least twenty-one (21) days for the Architect's review and at least fourteen (14) additional days for review by the Architect's consultants. Complex, inter-related or multiple submittals will often take longer. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals. If the Contractor fails to submit a submittal schedule, schedule acceptable to the Owner, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum-GMP or extension of Contract Time based on the time required for review of submittals, of submittals or any resulting delay in the procurement of material.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~ Architect and shall promptly notify the Owner of any substantial deviations from those schedules, including deviations that may affect the critical path.

§ 3.10.4 Meetings. Following execution of the Contract and ending with the date of Final Completion of the Work, the Contractor shall attend and participate in and ensure applicable Subcontractors of any tier attend and participate in:

- .1 Bi-weekly meetings during Preconstruction Phase;
- .2 Regular weekly on-site Project status meetings during construction scheduled by the Owner or by the Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project;
- .3 Monthly scheduling meetings, which shall occur by the 20th of each month and, when requested by the Owner, be attended by the Contractor and the Contractor's scheduler (the individual responsible for preparing the Contractor's CPM construction schedule and updates), to discuss (1) the current progress of the Work as compared to the most recent Contractor's construction schedule, (2) necessary updates to the Contractor's construction schedule to conform to the Contract and the current status of the Work, all of which shall be required prior to the Contractor submitting its next Application for Payment to the Owner, and (3) other scheduling related issues; and
- .4 Other meetings scheduled from time to time by the Owner or by the Architect to review progress of the Work and other pertinent matters.

The Contractor shall prepare and submit at the weekly Project status meetings three-week look-ahead schedules that relate to the overall construction schedule. At each weekly meeting with the Owner, the Contractor shall also submit (a) a short interval schedule in bar chart form showing the activities planned for the next week, and (b) a report showing actual starts and finishes from planned progress from the previous week. At the monthly scheduling meeting, the Contractor shall submit an updated Contractor's construction schedule based on the baseline CPM schedule, which shall identify accurately the current status of the Work.

§ 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.

§ 3.11.1 The Contractor shall make available to the Owner, 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 one record copy of the accepted Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and the Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor shall review and follow the as-built drawing standards referenced in the Contract Documents. The location of all new and existing piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The documents shall include all Architectural, Mechanical, Electrical, Structural, Landscape, and Civil as-built drawings, whether changes occur or not. These documents, as well as the approved permit set of plans, shall be available to the Architect and Owner at the site and reviewed with them on a monthly basis.

§ 3.11.2 The Contractor shall allocate in the Schedule of Values a separate line item in the amount of at least one-half of one percent (.5%) of the GMP for ongoing maintenance and completion of as-built drawings. The Contractor shall request payment for this line item with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Contractor fails to accurately and completely update the as-built drawings to reflect the current status of the Work, the Contractor shall not be entitled to any payment for as-built drawings for that month, and the monthly allocation for as-built drawings shall, at the Owner's option, be permanently deducted from the GMP by Change Order.

§ 3.11.3 Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify in writing that these documents reflect complete and accurate "as-built" conditions and shall deliver the following in a clear, clean and legible manner and in compliance with all requirements of local governmental authorities: (i) complete, integrated copies of the documents in both paper form in good condition and in electronic form in the same format as originally created by the Architect, (ii) the approved permit set of plans, and (iii) full-size record documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

§ 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 and/or assemblies or mockups 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 for the Contractor 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 and acceptance of such submittals by the Owner and the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is of Section 4.2.7 and shall not constitute an approval of the Contractor's means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon which the Owner and the Architect are 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 (but are not required to be) returned by the Owner or the Architect without action.

§ 3.12.5 ~~The Contractor shall review for compliance with the Contract Documents, approve, and submit to the be~~ responsible for tracking the status of submittals. The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, approve in writing, and submit to the Owner and the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner and the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Architect may return without action submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor; such return will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing if expedited review is requested or if there is any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. The Contractor shall stamp and initial its approval on all submittals prior to submitting them to the Architect indicating that the Contractor has satisfied its responsibilities under the Contract Documents for review of the submittals. Unless otherwise directed in writing, the Contractor shall submit one reproducible copy and five black line print copies to the Architect for its use and distribution. The Architect will retain the reproducible copy. The Contractor shall keep accurate records of the receipt, review and delivery of all submittals and shall submit to the Owner reports every other week on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility.

§ 3.12.6 By approving and 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. Each submittal shall bear a stamp or specific written indication that the Contractor has satisfied its responsibilities under the Contract Documents with respect to the review of the submission. The Contractor's superintendent must initial each submittal. Submittals that are simply passed through by the Contractor's clerical staff are not sufficient to meet these requirements. Each submittal shall be accompanied by a completed Submittal Cover Sheet, as included in the Project Manual or provided by the Owner or the Architect, which shall clearly identify the applicable Specification Section and paragraph number(s), material, supplier, pertinent data such as catalog numbers and the use for which it is intended.

§ 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-reviewed and no exceptions are taken by the Architect.

§ 3.12.8 The Work shall be in accordance with ~~approved-accepted~~ 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~~ review or acceptance 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 its explicit 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~~ approval, review, or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in GMP or Contract Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any Work from such Shop Drawings and complies with the contractual Change Order and Claim procedures. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected submittal without change in the GMP or Contract Time.

§ 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 acceptance or 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.

§ 3.12.10.3 Any mechanical systems shown in the Drawings are diagrammatic. (Other Drawings may also be diagrammatic.) The Contractor shall provide dimensioned Shop Drawings and details for all plumbing piping, ductwork, heating system piping, underground hot water piping, hot water boilers, and accessories to indicate complete systems. Shop Drawings shall be to 1/4" = 1'-0" minimum scale in all mechanical rooms, boiler rooms, as well as where accuracy or location is necessary for coordination or installation purposes. Ductwork Shop Drawings shall include a separate drawing to not less than 1/4" = 1'-0" scale showing all duct penetrations through structure (floors, roof, and walls) dimensioned, and all equipment locations, weights and pad details for all HVAC equipment. Critical dimensions of all equipment pad, and pipe or duct penetrations through structure shall be included.

§ 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. **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Materials and equipment on site shall be used directly in the Work and not stored on site after their use is complete. There shall be no use of existing on-site facilities (parking, toilets, etc.) without the Owner's prior approval.

§ 3.13.2 Portions of the site may be occupied and in use during construction and the Contract Documents may identify specific phasing, sequencing, and safety measures beyond those specified in these revised General Conditions. The Contractor is responsible to coordinate its Work with any occupation or use at no increase to the GMP or Contract Time and at no disruption to the occupancy or use. The Contractor shall be solely responsible for determining and implementing all necessary safety provisions.

§ 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.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction operations of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and shall pay for such Work at no additional cost to the Owner.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area-area, including roads, free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall furnish portable containers (including recycling containers) on site for use by all trades. At the Owner's request and, in any event, at the completion of the Work, the Contractor shall remove or recycle 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 upon three (3) days' notice to the Contractor and the Owner shall be entitled to reimbursement from the Contractor, Contractor, by offset, deductive Change Order, or otherwise, for any clean-up costs.

§ 3.15.3 The Contractor will only use waste receptacles provided by the Contractor and will appropriately dispose of any waste material off site.

§ 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, or if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, then 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, law and subject to the following conditions including the subparagraphs below, the Contractor shall defend, indemnify, and hold harmless the Owner, its Board members, employees, consultants, students, and volunteers, the Architect, the Architect's consultants, and the agents and employees, successors and assigns of any of them (collectively, the "Indemnified Parties") from and against claims, damages, losses (including loss of use), and expenses, direct and indirect and consequential, including but not limited to costs, design professional and consultant fees, and attorneys' fees incurred on such claims and in proving the right to indemnification, 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 the performance of the Work or the Contract or the acts or omissions of the Contractor, a Subcontractor, Subcontractor of any tier, their agents and anyone directly or indirectly employed by them, any of them ("Indemnitor"), 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. liable. 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.

§ 3.18.1.1 The Contractor will fully defend and indemnify the Indemnified Parties for the sole negligence or willful misconduct of the Indemnitor.

§ 3.18.1.2 Where claims, damages, losses, or expenses arise from the concurrent negligence of (1) the Owner, and (2) the Indemnitor, the Contractor's obligations to indemnify and defend the Indemnified Parties under this Section 3.18 shall be effective only to the extent of the Indemnitors' negligence.

§ 3.18.1.3 The Contractor agrees to being added by the Owner or the Architect as a party to any litigation, mediation, or arbitration with third parties in which the Owner or Architect alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractors of any tier.

§ 3.18.1.4 To the extent that any portion of this Section 3.18 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect. The obligations of the Contractor under this Section 3.18 shall not be construed to negate, abridge, or otherwise reduce any other right or obligations of indemnity which would otherwise exist as to any party or person described in this Section 3.18. To the extent the wording of this Section 3.18 would reduce or eliminate an available insurance coverage, this Section 3.18 shall be considered modified to the extent that such insurance coverage is not affected. This Section 3.18 shall survive completion, acceptance, final payment and termination of the Contract.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, Subcontractor of any tier, 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

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or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts, or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Indemnified Parties under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE OWNER AT LEAST TEN (10) DAYS PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

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. The term "Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will ~~provide~~ assist the Owner in providing administration of the Contract as described in the Contract Documents and will be an ~~Owner's representative~~ Owner's representative, but not the Owner's agent, during construction until the date the Architect issues the final Certificate for Payment, for Payment and from time to time during the one (1) year period for correction of Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The Architect is not the agent of the Owner and is not authorized to agree on behalf of the Owner to order changes in the GMP or Contract Time, nor to waive provisions of the Contract Documents, nor to direct the Contractor to take actions that change the Contract Sum or Contract Time, nor to accept notice or Claims on behalf of the Owner.

§ 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 and to keep the Owner reasonably informed about 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~~ Neither the Architect nor the Owner will have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, including any safety requirements, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Contractor shall reimburse the Owner for any amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 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~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect will not~~ Neither the Architect nor the Owner will 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. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and its Subcontractors or other third parties.

§ 4.2.4 Communications

The Owner and Contractor shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the

~~Project. Communications the Project.~~ The Contractor shall provide the Owner with a direct copy of all written communications to the Architect, including all transmittals, notices, requests, Claims, and potential changes in the Contract Sum or Contract Time but not including Shop Drawings, Product Data or Samples. 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. Contractor, except to discuss Claims, potential disputes, and as otherwise provided in the Contract Documents. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will ~~review and certify~~ make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 ~~The Architect has~~ Both the Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner 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 or the Owner 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 or the Owner or their representatives 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,~~ upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, and other submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness 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. The Contractor shall clearly note, and the Architect shall not be required to search out for, any deviations from the Contract Documents not clearly identified by the Contractor, nor shall the Architect be required to review partial submissions of those for which submission for correlated items have not been received. Regardless of how a submittal is marked, the Contractor should not presume that the Architect has reviewed a submittal in every aspect.

§ 4.2.8 The Architect or the Owner 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~~ make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of final completion; 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 in accordance with the requirements of the Contract Documents and 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~~ offer recommendations regarding matters concerning performance under, and requirements of, the Drawings and Specifications, and assist the Owner in the interpretation of all other

Contract Documents on written request of either the Owner or Contractor. The Owner shall notify the Architect of the Owner's interpretation of other Contract Documents. The Architect's response to such requests will be made in writing-writing, will be copied to the Owner, and will be made within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and ~~decisions-recommendations~~ 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-Drawings~~. When making such interpretations and ~~decisions-recommendations~~, the Architect will endeavor to secure faithful performance of the Contract 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-either.~~

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

§ 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~~ "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site-site~~ or to supply materials or equipment. 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~~ "Sub-subcontractor" or "lower-tier 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-site~~ or to supply materials or equipment. 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.

§ 5.1.3 A "Subcontractor of any tier" is a Subcontractor or a lower-tier Subcontractor.

§ 5.1.4 The designation of terms in this article is not meant to change or alter the definitions contained in RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," RCW 39.12, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 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~~, each Subcontractor bid package, and not later than seven (7) days after award, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the ~~Work, including of the Work (i.e., at least one percent (1%) of the GMP), including the names of those who are to furnish materials or equipment fabricated to a special design. Within 14 days-design and the names of any suppliers of the principal items or systems of materials and equipment proposed for the Work. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specification Sheets and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical sections of the Project Manual and satisfactory to the Architect and Owner. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. If the Agreement is executed, no progress payment will become due until this information is so furnished. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors of any tier shall constitute approval of any Subcontractor of any tier or of its performance. Within a reasonable time of receipt of the information, the Owner or 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 Owner or the Architect to provide notice within the 14-day period-a reasonable time~~

shall constitute notice of no reasonable objection. If the Owner makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the GMP or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 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 and timely 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 qualified, "responsible" and reasonably capable of performing the Work, the Contract Sum GMP 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-GMP or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting qualified names as required. In addition, no increase in the GMP or Contract Time shall be allowed for such change if the Owner reasonably concludes that (1) a proposed Subcontractor has materially failed to perform satisfactorily (such as submitting a false or frivolous Claim, failing timely to close out a project, or causing a material delay) on one or more projects for the Owner within five (5) years of the bid date or is otherwise not "responsible" as defined in RCW 39.04, (2) the proposed Subcontractor is not qualified as required within the technical sections of the Project Manual, or (3) the proposed Subcontractor is different from the entity listed with the Bid. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the Contract Sum and Contract Time. The Contractor's listing or use of any Subcontractor that is not "responsible" shall be sufficient cause for the Owner to declare that the Contractor is not a responsible bidder, unless the Contractor agrees to substitute a responsible Subcontractor at no change to the GMP or Contract Time.

§ 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. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such Work. This removal shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the GMP and Contract Time, nor shall the Owner be obligated to so request.

§ 5.2.5 As used in this Section 5.2, "reasonable objection" shall include without limitation:

- .1 a proposed Subcontractor of any tier differing from the entity listed with the Bid,
- .2 lack of "responsibility" of the proposed Subcontractor, as defined in RCW 39.04, or lack of qualification or responsibility of the proposed Subcontractor as otherwise defined in or required by the Contract
- .3 lack of qualification as required by the Specifications, or
- .4 material failure to perform satisfactorily (such as causing a material delay or submitting a Claim that the Owner considers inappropriate) on one or more projects for the Owner within five (5) years of the bid date.

§ 5.2.6 The Contractor shall perform with its own organization and under its immediate supervision a portion of the Work not including general conditions amounting to not less than the percentage (if any) of the total Contract Sum specified in the Contract Documents.

§ 5.2.7 The Contractor shall verify and confirm to the Owner in writing the responsibility of each first-tier Subcontractor. A Subcontractor of any tier that engages other Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each Subcontractor, at the time of subcontract execution, meets the responsibility criteria specified in the Contract Documents.

§ 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. § 5.3.1 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. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any Subcontractor on request.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any assigned Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the complete performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of all obligations of the Contract Documents. The Contractor will be solely responsible for any scope gaps in its contracts with Subcontractors, including gaps that result from Subcontractor exclusions. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, Drawings, Specifications, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship. The Owner shall provide to the Contractor copies of the written Owner-Supplier agreements to any early procurement contracts and any agreements between the Owner, to the extent that such agreements are identified in the Contract Documents.

§ 5.3.3 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor of any tier defaults in its obligation promptly to correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 5.3.4 The Contractor shall give, and shall cause its Subcontractors of any tier to give, all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and WISHA requirements, and the Contractor shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Contractor or a Subcontractor of any tier to have complied with any such requirements in any respect.

§ 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~~ Sections 14.2 or 14.4 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~~ subcontract, but only for events and payment obligations that arise after the date of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than ~~30~~ sixty (60) 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 and coordinating their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement with the Owner. 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. If the Contractor receives items from a separate contractor or from the Owner for storage, erection, or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage, and any necessary replacement of items received.

§ 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 and the Owner 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 and the Owner 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 reasonably discoverable or apparent.

§ 6.2.3 The Contractor shall reimburse and indemnify 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~~ construction of the Separate Contractor. If such a Separate Contractor sues or initiates any proceeding against the Owner on account of any damages or delays alleged to have been caused by the Contractor, the Owner shall notify the Contractor. The Contractor shall defend all such proceedings at its own expense, and shall defend, indemnify, and hold the Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by the Owner.

§ 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.

§ 6.2.6 Should the Contractor or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any other contractor on the Project, the Contractor shall, upon due notice, promptly use its best efforts to settle with such other contractor by agreement or otherwise to resolve the dispute.

§ 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~~ responsible, including markup on such costs.

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, solely 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 or the Owner 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.

§ 7.1.4 Before effectuating a change in the Work or the Contract Documents, the Owner may request the Contractor through a Change Order proposal to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within fourteen (14) days, and shall in good faith specify the components and amounts by which the GMP and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in cost categories that comprise the Cost of the Work for the Contractor and major Subcontractors. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect and the Owner may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

§ 7.1.5 If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts and all work therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

§ 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~~; GMP; 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~~ GMP 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. The Owner's use of a Construction Change Directive does not constitute the Owner's agreement that the directive constitutes a change in the Work, the GMP, or Contract Time.

§ 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~~; GMP, the adjustment shall be based on one of the following ~~methods~~; methods or as mutually agreed by the Owner and Contractor:

- .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 proposed by the Owner and determined in a manner agreed upon by the parties (with or without a cost limitation) 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.~~ **§ 7.3.4.1** If the Contractor does not respond promptly or disagrees with the method for adjustment in the GMP, the Contractor shall provide a not-to-exceed price for the Construction Change Directive Work within fourteen (14) days of receipt of the Construction Change Directive, and the Contractor shall keep and present, itemized in the cost categories that comprise the Cost of the Work and in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those

so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment, material and subcontract costs, which shall be itemized in the cost categories that comprise the Cost of the Work. Costs for layout and control, if needed, shall be approved by the Architect and reimbursed only for workers at foreman level and below when supported by actual cost and time records. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one (21) days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Time or GMP. The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 15), of the items in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors of any tier concerning costs of any Work included in a Construction Change Directive.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the adjustment or method shall be referred to the Architect for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's construction schedule directly caused thereby. If the Contractor disagrees with the Architect's determination, 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 involved. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect and the Owner in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time-GMP or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in Contract Sum-GMP and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as incorporated into 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 GMP shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Owner and 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 and provided that the Work to be performed under the Construction Change Directive is complete and any reservations of rights regarding the Construction Change Directive have been signed by the Owner, the Contractor may request payment for amounts no in dispute in Applications for Payment accompanied by a Change Order indicating the parties' agreement with such costs.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum-GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a will be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. In accordance with RCW 39.10.350(4), if the Owner and the Construction Manager agree, in writing, on a

price for Changed Work, the Owner will issue a Change Order within thirty (30) days of the written agreement. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Contractor's construction schedule directly caused thereby.

§ 7.4 Minor Changes in the Work

The Architect ~~may~~ and the Owner have the authority to order minor changes in the Work (sometimes called a Design Clarification) that are consistent with the intent of the Contract Documents and do not involve an adjustment in the ~~Contract Sum-GMP~~ or an extension of the Contract Time. The Architect's ~~or the Owner's~~ order for minor changes shall be ~~in writing~~ in writing in the form of a written order such as a Design Clarification, Field Authorization, or an Architect's Supplemental Instruction. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the ~~Contract Sum-GMP~~ or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. ~~the Owner and the Architect and shall submit a Change Order proposal for review and response by the Owner and the Architect, and, if the Contractor's disagrees with the Owner's and the Architect's response, the Contractor shall submit a Notice and Claim pursuant to Article 15.~~ 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-GMP~~ or Contract Time, the Contractor waives any adjustment to the ~~Contract Sum-GMP~~ or extension of the Contract Time.

§ 7.5 PRICING COMPONENTS

§ 7.5 For the Contractor, the total cost of any Change in the Work or of any Claim for an increase or decrease in the GMP shall be limited to the sum of the Cost of the Work and the Fee defined in the Agreement. For subcontractors of any tier, the total cost of any Change in the Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the actual, reasonable following components.

§ 7.5.1 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits:** The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Subcontractor shall provide to the Owner copies of payroll records, including certified payroll statements, upon the Owner's request.
- .2 Workers' insurances:** Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- .3 Federal insurances:** Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect and the Owner.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is used solely on the change at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, as modified by the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by rental receipts. If more than one rate is applicable, the lowest available rate will be utilized. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. Mobilization and standby costs shall not be charged for equipment already present on the site.

The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. No gas surcharges shall be charged. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than one (1) week) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Lower tier Subcontractor costs: These are payments the Subcontractor makes to lower tier Subcontractors for changed Work performed by such lower tier Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5 and, among other things, shall not include consultant costs, attorneys' fees, or Claim preparation expenses.

§ 7.5.5 Subcontractor's Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including facilities, purchasing, clerical, project manager, field engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Change Order and Claim preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements of Subcontractor claims by the Owner after Substantial Completion. The Fee shall be limited in all cases to the following schedule:

- .1 The Subcontractor shall receive 10% of the cost of any materials supplied or work properly performed by the Subcontractor's own forces.
- .2 The Subcontractor shall receive 5% of the amount owed directly to a lower tier Subcontractor or supplier for materials supplied or work properly performed by that lower tier Subcontractor or Supplier.
- .3 Each lower tier Subcontractor shall receive 10% of the cost of any materials properly supplied or work performed by its own forces.
- .4 Each lower tier Subcontractor shall receive 5% of the amount it properly incurs for materials supplied or work performed by its suppliers or subcontractors of any lower tier.
- .5 The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1-7.5.4. None of the fee percentages authorized in this Section 7.5.5 shall be compounded.
- .6 The total summed Fee of the Subcontractor and all lower tier Subcontractors and suppliers of any tier shall not exceed twenty percent (20%). If the Fee would otherwise exceed twenty percent (20%), the Subcontractor shall equitably reduce the Fee percentages for the Subcontractor and applicable lower tier Subcontractors.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section 7.5.5 are substantially greater than the fees and overhead normally included in determining the GMP; that these higher percentages are a sufficient amount to compensate the Subcontractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractor for some Changes compensates the Subcontractor for any Changes for which the Subcontractor believes the percentage is otherwise insufficient.

§ 7.5.6 Cost of change in insurance or bond premium. This is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.1, and subject to audit) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.1, and subject to audit) of the change in the Subcontractor's premium for the Subcontractor's statutorily required performance and payment bond arising directly from the changed Work.

Upon request, the Contractor and Subcontractor shall provide the Owner with supporting documentation from their insurer or surety of any associated cost incurred.

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 by the Owner in a Notice to Proceed, which may not be issued until the Contractor has complied with the terms of the Owner's notice of award of the Contract. Separate notices to proceed may be given for different phases of the Work. Work on the site may begin when applicable permits have been issued and the Contractor complies with the requirements of the Notice to Proceed and submits the bonds, certificates of insurance, and other documents required by the Contract Documents.~~

§ 8.1.3 The date of Substantial Completion (or a designated portion thereof) 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 ~~Documents, including any specific phases established in the Contract Documents, are of the essence of the Contract. By executing the Agreement, the Agreement and the GMP Amendment,~~ 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 timely achieve all phasing milestones, shall achieve Substantial Completion and Final Completion within the Contract Time.

§ 8.2.4 THE TIMELY COMPLETION OF EACH PHASE AND OF THE OVERALL PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss are included in the Contract Documents for both Substantial Completion and Final Completion and may be identified in the GMP Amendment. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to ensure completion of the Work within the Contract Time and the approved Contractor's construction schedule. If the Contractor fails substantially to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier, fails to meet the Contractor's construction schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

§ 8.2.5 Any provisions in the Contract for liquidated damages shall not relieve or release the Contractor from liability for any and all damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

§ 8.2.6 It is the Contractor's option, but not its right, to attempt to complete the Project earlier than the date(s) specified in the Contract Documents. Accordingly, any Claim based on delay shall be evaluated based on the dates specified in the Contract Documents, not an earlier projected completion date that the Contractor may propose.

§ 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, Work, only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time; (3) by fire, unusual and unanticipated governmental delays, unavoidable casualties, unanticipated, severe adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; 15.1.6.2; (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 or the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine time, limited to the change in the actual critical path of the Contractor's construction schedule directly caused thereby, as the Architect and the Owner may determine consistent with the provisions of the Contract Documents. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the construction schedule, so as to actually delay the Project completion beyond the date of Substantial Completion, or (2) delay transforming an activity into the critical path of the construction schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Such claims shall include any proposed changes in the Contractor's construction schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Contractor's construction schedule, and the action being taken to correct the delay situation. That the Owner or Architect may be aware of the occurrence or existence of a delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim.

§ 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.

- .1 If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP. The Contractor shall be entitled to a change in the GMP only if the delay was caused by the Owner or the Architect, or anyone acting on behalf of them. The Contractor shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2 In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section 7.5.5, it is agreed that the total combined damages to the Contractor and any Subcontractors of any tier for each day of delay shall be limited to the daily liquidated damage rate specified in the Contract Documents due the Owner for the Contractor's delay in achieving Substantial Completion. By submitting its bid on the Work, the Contractor represents that it would be difficult if not impossible to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable estimate of its loss. No damages will be allowed for any time prior to fourteen (14) days before receipt of written notice of the Claim of the delay pursuant to Article 15.
- .3 The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of Work, concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or increased overhead or general conditions; profit upon damages for delay;

impact damages including cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid through Section 7.5.5 and any liquidated damages paid hereunder.

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 (e.g., more than fifty percent) so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices but not the Contract Time or any other portion of the Contract Sum 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 Owner and the Architect at least fourteen (14) days 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~~ the Owner and the Architect (the "Schedule of Values"). At a minimum, the Work shall be itemized by Specification section or system; separate values for labor, materials and equipment shall be provided; and line items on the Schedule of Values shall be tied to the Contractor's construction schedule. Quantities shall be provided for each section or system of the Work. If an example of the Schedule of Values is included in the Contract Documents, the Contractor shall itemize and prepare the Schedule of Values as indicated by the example with respect to form, content, and level of detail. Unless otherwise approved, the schedule of values shall be organized to reflect the Contractor's bid packages. This schedule, unless objected to by ~~the Architect~~ the Architect or the Owner, 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 the Owner and supported by such data to substantiate its accuracy as the Architect and the Owner may require, and unless objected to by ~~the Architect~~ the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

- .1 Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2 The Schedule of Values shall allocate at least one percent (1%) of the GMP to Commissioning, as defined in the Contract Documents, which the Contractor shall allocate to those Subcontractors participating in Commissioning.
- .3 The Schedule of Values shall allocate at least at least one-half of one percent (.5%) of GMP for maintenance of as-built drawings as required by Section 3.11.2 of these General Conditions.
- .4 Payment applicable to the expenses of Contractor's bond and/or builder's risk insurance will be made only upon receipt of paid invoice from surety and/or insurance carrier.
- .5 No payment will be made for shop drawings or submittals until on-site receipt of materials, except partial payment may be made for structural steel, fire sprinkler, automatic temperature control, and fire alarm shop drawings after they have been reviewed and accepted by the Architect.
- .6 The Schedule of Values shall also allocate at least four percent (4%) of the GMP as a separate line item for that portion of the Work between Substantial Completion and Final Completion, which shall be allocated as follows: half shall be allocated for punch list Work; one quarter shall be allocated for the Contractor's provision of final approved as-built drawings and operations and maintenance data as defined in the Contract Documents; and one quarter shall be allocated for completion of all other requirements for Final Completion and final payment. The line item shall be entitled "Final Documentation and Punch List Completion" and will be earned and paid as a part of the final payment following Final Acceptance of the Project by the Owner's Board of Directors. This percentage is not the statutory retainage described in Section 9.3.4 or any other retainage but rather requires the Contractor to recognize that the Contractor and its Subcontractors will expend significant costs in advancing the Work from Substantial Completion to Final Completion and Final Acceptance, and that this amount is not earned until full and complete Final Acceptance of the Project. The Owner may, at its sole discretion, release portions of this amount progressively as items are completed and upon reasonable terms.

§ 9.3 Applications for Payment

§ 9.3.1 ~~At least ten days before the date established for each progress payment, the~~ The Contractor shall submit to the Architect an ~~itemized Application~~ itemized Applications for Payment prepared in accordance with the schedule of values, ~~if required under Section 9.2, values and the requirements of this Section for completed portions of the Work.~~ The ~~application~~ Applications for Payment 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. The Owner will make progress payments monthly for Work duly certified, approved, and performed during the calendar month preceding the Application for Payment. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

§ 9.3.1.1 Draft Application. By the twenty-fifth (25th) calendar day of each month, the Contractor shall submit to the Architect a report on the current progress of the Work as compared to the Contractor's construction schedule, an updated construction schedule, updated as-built drawings, and a draft, itemized Application for Payment for Work performed during that calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Contractor, the Owner, and the Architect shall meet within the next seven (7) days and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Architect or the Owner may request the Contractor to provide data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records (if requested by the Owner), and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished. As provided in Section 7.3.9, such applications ~~may include requests for payment may, if payment is approved by the Owner and the Architect, include requests for payment of undisputed amounts 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.~~ Directives and subsequently memorialized by Change Order, or by interim determinations of the Owner and the Architect.

§ 9.3.1.2 Payment Request. After the Contractor, the Owner, and the Architect have met and conferred regarding the updated draft Application, and the Contractor has furnished all progress information required and all data requested by the Owner or Architect under Section 9.3.1.1 above, and after the Contractor has provided the Owner and Architect with current meeting minutes, daily reports, as-built drawings, commissioning logs (if requested), and an updated construction schedule, the Contractor may submit a payment request no earlier than the fifth (5th) day of the following month in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work properly performed during the prior calendar month on a form furnished or approved by the Owner. The Contractor shall also submit a lien release on a form furnished or approved by the Owner from each Subcontractor for whose Work the Owner paid the Contractor for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION BY THE CONTRACTOR THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the Application. If required by the Owner, the Contractor shall submit proof of payment to Subcontractors for prior months, such as lien releases or cancelled checks. 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. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.3 Disputed Amounts. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may, also by the fifth (5th) day of the month, submit to the Owner and the Architect along with the approved payment request a separate written payment request specifying the exact additional amount requested, the category in the Schedule of Values in which the payment is requested, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, the Contractor and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records pursuant to WAC 296-127-3120 relating to the additional amount claimed to be due.

§ 9.3.1.4 Validity of Payment Requests. A payment request shall not be valid unless it complies with the requirements of the Contract Documents. If a separate payment request concerning a disputed amount does not comply with the requirements of the Contract, the Owner will provide a written statement to the Contractor.

§ 9.3.1.5 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of lower tier Subcontractors), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner, and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within seven (7) days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of Project-specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance and in writing 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 have been 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.

§ 9.3.4 Retainage.

§ 9.3.4.1 In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained. After award of a Contract for public improvements, or work for which retained percentages are required to be reserved under the provision of RCW 60.28, the Owner shall require the Contractor to exercise, in writing, one of the options listed below:

- .1 Retained percentages will be retained in a fund by the Owner not subject to release until sixty (60) days following the Final Acceptance of the Work as completed; or
- .2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty (60) days following Final Acceptance of the Work as completed; or
- .3 Placed in escrow with a bank or trust company and not subject to release until sixty (60) days following the Final Acceptance of the Work as completed.
- .4 If the Contractor provides a bond in place of retainage, it shall be in an amount equal to 5% of the GMP plus Change Orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of "A" or better and a financial rating of no less than "VIII," and be signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

§ 9.3.4.2 The Contractor or a Subcontractor may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Sub-subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's approved 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

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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 and Final 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 Owner may, with or without the Architect's concurrence, withhold payment, and the Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, evidence or subsequent observations, 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 (except where an insurer has unconditionally accepted coverage) 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~~; GMP;
- .5 damage to the Owner or a Separate ~~Contractor~~; Contractor (except where an insurer has unconditionally accepted coverage);
- .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 unsatisfactory prosecution of the Work by the Contractor, including but not limited to repeated or material failure to carry out the Work in accordance with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's construction schedule requirements, or the imposition of liquidated damages;
- .9 failure to submit affidavits pertaining to wages paid as required by statute;
- .10 failure to submit a properly updated construction schedule;
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12 liquidated damages;
- .13 failure to properly maintain as-builts
- .14 failure to properly submit daily construction records;
- .15 failure to properly submit certified payrolls; or
- .16 failure to properly submit any other documents required of the Contractor under 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~~ 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.

§ 9.5.5 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for ~~Payment~~, ~~Payment and the Certificate of Payment has been approved by the Owner,~~ the Owner shall make payment in the manner and within the time provided in the Contract Documents, ~~and shall so notify the Architect.~~ Documents. The Owner will make progress payments within thirty (30) days of receipt and approval of the Architect's Certificate for Payment; any payments made by or through the Office of the Superintendent of Public Instruction will be made in accordance with the policies and procedures of that office. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each ~~Subcontractor~~, Subcontractor promptly, and no later than seven (7) days after receipt of payment from the Owner, ~~out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work,~~ 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. ~~If the Contractor does not receive payment for any cause that is not the fault of a particular Subcontractor but does receive payment for materials supplied or Work performed by that Subcontractor, the Contractor shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed Work, less the retained percentage.~~

§ 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~~ The Owner shall at any time 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.~~ Work.

§ 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 Liens. Except to the extent a lien has been filed because of the failure of the Owner to make a contractually required payment of undisputed amounts, the Contractor shall defend, indemnify, and hold harmless the Owner from all liens, including all losses, liability, damages or expenses, including Architect costs and 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, tier or other person properly furnishing labor, equipment, materials or other items in connection with the performance of the Work. 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. The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that the Owner has paid the Contractor for such. The Contractor shall furnish to the Owner such releases of liens and Claims and other documents monthly with its Application for Payment to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. If approved by the Owner, the Contractor may substitute other security acceptable to the Owner, such as a surety bond, for the property against which the lien or other claim for payment has been asserted. asserted in lieu of paying disputed liens or Claims.~~

§ 9.7 Failure of Payment

If the Architect ~~does not~~ improperly fails to issue a Certificate for Payment, through no fault of the Contractor, within ~~seven fifteen~~ (15) days after receipt of the Contractor's ~~Application for Payment,~~ timely and complete Application for Payment prepared in accordance with Section 9.3 (subject to the approved payment schedule), or if the Owner does not pay the Contractor within ~~seven fifteen~~ (15) days after the date established in the Contract Documents, the undisputed amount due and owing to the Contractor certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ~~seven fifteen~~ (15) 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-GMP~~ 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 and Occupancy

§ 9.8.1 Substantial Completion is the stage in the progress of the ~~Work~~ Work, or portion or phase thereof designated and approved by the Architect and Owner, 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.~~ fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including FF&E and student, teacher, and staff occupancy. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part. All Work other than incidental corrective or punch list Work and final cleaning shall be completed, including but not limited to the following:

- .1 Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of the completed Work.
- .2 Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- .3 Complete all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks.
- .4 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.

- .5 Discontinue or change over and remove temporary facilities and services from the Project site.
- .6 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .7 Complete final cleaning of the entire Project site.

The Work is not Substantially Complete unless the Owner and Architect reasonably judge that the Work can achieve Final Completion within forty-five (45) days (or such other period of time as is specified in the Contract Documents); appropriate final cleaning has occurred; all designated systems and parts are usable, and Selected Equipment and Systems are ready for commissioning as set forth in Section 9.8.1.1 below; trend logs have been provided to the Owner; utilities are connected and operating normally and training sessions (except those that must occur after the Date of Commissioning) have occurred; all required permits have been issued; O & M manuals have been submitted for review; and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

§ 9.8.1.1 Commissioning of Selected Equipment and Systems. Equipment and systems identified for commissioning in the Contract Documents are considered "Selected Equipment and Systems." When the Contractor considers that all Selected Equipment and Systems are complete and ready for normal operation and functional performance testing, and all pre-commissioning checklists are completed, the Contractor shall so notify the Architect and the Owner in writing, which shall be a minimum of fourteen (14) days prior to the date of Substantial Completion (or any earlier date established in the Contract Documents).

§ 9.8.1.1.1 A reasonable period shall be allowed for the Architect and commissioning agent to schedule and observe the functional performance tests of the systems identified in the Contract Documents. If the review discloses that any item is not complete in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously complete or correct such item upon notification by the Architect or commissioning agent and then submit a request for another review to determine the completion of commissioning.

§ 9.8.1.1.2 When the commissioning of all Selected Equipment and Systems is complete, the Owner's commissioning agent will notify the Owner in writing, which shall establish the date commissioning is complete ("Date of Commissioning"). Post-commissioning training of Owner personnel related to Selected Equipment and Systems shall begin immediately after the Date of Commissioning and shall be conducted by appropriate Subcontractor personnel who are knowledgeable with the construction and operation of each system prior to their departure from the site. At all times prior to the Date of Commissioning, the Contractor (or the installing Subcontractor) shall perform all maintenance recommended by the equipment or system manufacturer or otherwise required, and all maintenance necessary to retain the equipment or system warranty, which, at a minimum, shall include replacement of all filters at least once every three (3) months. Immediately following the Date of Commissioning, the Contractor (or the installing Subcontractor) shall replace all filters and provide the Owner with a complete extra set of filters, all at no additional cost and as part of the GMP. Warranties on any Selected Equipment and Systems required by the Contract Documents shall commence on the Date of Commissioning, unless such date occurs earlier than Final Completion or otherwise provided. If the Date of Commissioning occurs before Final Completion, all warranties shall commence at Final Completion.

§ 9.8.1.2 Indemnification. The Contractor shall defend, indemnify, and hold harmless the Owner and the Architect and their agents, employees, and consultants, successors and assigns from and against all claims, damages, losses and expenses of third parties, direct and indirect, including costs, commissioning agent and design professional fees, and attorneys' fees incurred by the Owner related to such claims and in proving the right to indemnification, arising out of or resulting from the failure of the Contractor to attain the Date of Commissioning less than thirty (30) days prior to the date of Substantial Completion fixed by the Contract Documents.

§ 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. The Contractor shall proceed promptly to complete and correct items on the list. 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, and upon verification by the Architect that all permits, approvals, testing, training and other submittals and administrative actions required under the Contract Documents for obtaining Substantial Completion have been satisfied, the Architect and, at its option, the Owner, 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. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, and again request an inspection. The Contractor shall pay the costs associated with any further reinspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that which, upon approval of the Owner, 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 Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion; the Contract Documents. The Contractor shall attach and submit with the executed Certificate of Substantial Completion the Certificate of Occupancy, as well as a written list of each outstanding and unresolved Claim. Any Claim not so submitted and identified, other than retainage and the undisputed balance of the GMP, shall be deemed waived and abandoned. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection, including Architect and consultant fees.

§ 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, Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part of the GMP, notwithstanding their not being recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof, as required by the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment following Final Completion.

§ 9.8.6 The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punch lists with respect to the activity of each Subcontractor of any tier and report weekly to the Owner on outstanding punch list items. Beginning ninety (90) days before the scheduled date of Substantial Completion, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain required certificates of occupancy and make recommendations to the Owner with respect to effectuating the earliest possible completion. The Contractor shall include this report as a schedule item on its CPM schedule.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner ~~may~~ may, upon written notice to the Contractor, take possession of, operate, 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 and the Contractor shall cooperate with such occupancy and use, including without limitation any FF&E, student, teacher, or staff move-in. Occupancy shall not occur until such occupancy or use is 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. complete. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of the risk of loss or any of its obligations under the Contract, nor establish~~

a date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within forty-five (45) days of Substantial Completion (or such other period of time as is specified in the Contract Documents), the Owner may take possession of, use or operate all or any part of the Work without an increase in the GMP or the Contract Time on account of such possession or use. 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, Final Acceptance, 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. **Final Completion.**

§ 9.10.1.1 The Contractor shall cause punch list items to be completed within forty-five (45) days of Substantial Completion (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, after the date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within forty-five (45) days of the date of Substantial Completion (or such other period of time as is specified in the Contract Documents), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. Moreover, and without limiting any other available remedy, the Owner may take over and complete any portion of the Work at any time more than forty-five (45) days following Substantial Completion if Final Completion has not been achieved. If the Owner elects to take over and perform any portion of the Work, the Owner may deduct the actual cost of performing the Work (including direct and indirect costs), and including any design costs, plus 15% to account for the Owner's transaction costs from the Contract Sum.

§ 9.10.1.2 Upon receipt of the Contractor's notice that the Contractor has inspected the punch list items, the punch list items are completed, and 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 accompanied by the Contractor (if requested by the Architect or Owner). If the Architect or Owner determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing 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. 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.

§ 9.10.1.3 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees, and all Commissioning agent and construction management fees, incurred by the Owner for services performed more than forty-five (45) days after Substantial Completion of all the Work (or such

other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.4 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Commissioning Report has been accepted by the Owner's Board of Directors, and the Contractor has submitted all the items identified in Section 9.10.1.5 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner.

§ 9.10.1.5 "Final Completion" will be attained when the Contractor has accomplished the following:

- .1 Complete all requirements listed in Section 9.8 for Substantial Completion.
- .2 Complete all remaining punch list items and remaining Work and obtain approval by Architect and Owner that all Work is complete.
- .3 Obtain permanent occupancy permits (if only a temporary occupancy permit was issued previously).
- .4 Submit any final Change Orders and a final Application for Payment.
- .5 Submit final record documents, any final property survey, and operation and maintenance manuals required by the Contract Documents.
- .6 Deliver tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Contract Documents.
- .7 Complete final cleaning after punch list Work (in addition to the cleaning that was required to obtain Substantial Completion).
- .8 Complete instruction and training sessions (which are to begin prior to Substantial Completion) on all major building systems including HVAC, intercom, data communications, fire alarm, telephone, fire sprinkler, emergency power, security and clocks.
- .9 Submit executed warranties.
- .10 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- .11 Discontinue or change over and remove temporary facilities and services from the Project site.
- .12 Advise the Owner on coordination of any shifting insurance coverages, including proof of extended coverages as required.
- .13 Acceptance of the final Commissioning Report by the Owner's Board of Directors.

§ 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 **Final Acceptance and Payment**

§ 9.10.2.1 Neither final payment nor any retained percentage shall become due until after the Owner's Board of Directors has formally accepted the Project ("Final Acceptance.") To achieve Final Acceptance, the Architect must have issued a final Certificate for Payment under Section 9.10.1.4, an occupancy permit must have been issued, Final Completion must have occurred, and the Contractor must have submitted to the Architect and the Owner the following:

- .1 an affidavit that all 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) except for any Claims that are specifically identified on the affidavit,
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner,
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4)
- .4 consent of surety, if any, to final payment, (5) payment (AIA form G707 or equivalent),
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner,
- .6 other data establishing payment or satisfaction of or protection against 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. Owner (Contractor's Affidavit of

Release of Liens, AIA form G706A or equivalent). 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.

- .7 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor,
- .8 a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner,
- .9 certification that the materials in the Work are "lead-free" and "asbestos-free,"
- .10 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project, including but not limited to all city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed off permits,
- .11 record documents; and
- .12 all warranties, guarantees, training manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents or local governmental entities.

§ 9.10.2.2 Pursuant to RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," completion of the Contract Work shall occur upon Final Acceptance.

§ 9.10.3 If, after Substantial Completion of the Work, ~~final completion thereof~~ Final Completion is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting ~~final completion~~, Final Completion, and the Architect so confirms, the Owner ~~shall~~, May, 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 Waiver of Claims - Final Payment by Owner. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, statutory retainage, 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 Waiver of Claims - Final Payment to Contractor. 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~~ and attached to the Contractor's final Application for Payment.

§ 9.10.6 Waiver of Claims - Change Orders. The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner. If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and in all cases initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate

agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

§ 9.10.7 Release of Retainage: The retainage will be held and applied by the Owner as a trust fund in a manner required by RCW 60.28. Release of the retainage will be processed in ordinary course of business upon the expiration of sixty (60) days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in RCW 60.28, that no claims have been brought to the attention of the Owner and that the Owner has no Claims under this Contract; and provided further that release of retention has been duly authorized by the State. The following items must also be obtained prior to release of retainage: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries.

§ 9.10.8 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.9 The Contractor shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, and other tangible and electronic data and evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of the Contract and a waiver of all Claims by the Contractor.

§ 9.10.10 Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. Each Subcontractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, a Subcontractor shall make available at the office of the Subcontractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract and a waiver of all Claims by that Subcontractor.

§ 9.10.11 The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under Chapter 42.56 RCW will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner.

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. **§ 10.1.1** The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall provide its safety program to the Owner within seven (7) days of receipt of a notice to proceed. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or the Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work. The

Contractor shall be solely and completely responsible for conditions of the Project site, including safety of all persons and property, during performance of the Work.

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees and Subcontractors of any tier; or (5) affect the Contractor's responsibility for the protection of property, students, staff and the general public.

§ 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 or involved in 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. The Contractor shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's students and staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply.

§ 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. The Contractor shall maintain at the Project site office or other well known place at the Work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to Work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Contractor's and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card.

§ 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.8 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief and shall bear the risk of any uninsured loss (including deductibles or self-insured retention) or destruction of, or injury or damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. The Contractor is responsible for any deductible amounts or self-insured retention related to any insurance coverage.

§ 10.2.9 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other persons or entity.

§ 10.2.10 The Project site may be occupied by students, Owner employees, and others during construction of the Project. The safety of these site occupants and site security are of paramount importance to the Owner. For that reason, the Contractor shall exercise control over all construction operations to ensure the safety of all site occupants and shall coordinate with the Owner and Architect as necessary to promote the Contractor's obligation for site safety. The Contractor shall also strictly follow all hours of work, joint occupancy, site security, and phasing requirements of the Project, including those set forth in the Contract Documents.

§ 10.2.11 Injury or Damage to Person or Property

If the Contractor or any person or entity known to the Contractor suffers injury or damage to person or property because of an alleged act or omission of the Owner, or of others for whose acts is the Owner may be legally responsible, notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.

§ 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 hazardous material or substance, as defined by CERCLA, 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. The Contractor shall proceed with the Work in areas not affected.

§ 10.3.2 Upon receipt of the Contractor's notice, and with the Owner's agreement, 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 verified that it has been~~ 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~~-objection, but the Owner shall not be responsible for any delay resulting from the Contractor's objection to such person or entity. 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 may~~ be extended appropriately and the ~~Contract Sum shall GMP may~~ be increased by the amount of the Contractor's ~~demonstrated and~~ reasonable additional costs of shutdown, delay, and ~~start-up~~-start-up, which adjustments shall be accomplished as provided in Articles 7, 8 and 15.

§ 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~~-fault, misuse, or negligence in the use and handling of such materials or substances. The Contractor shall store all hazardous materials safely, whether or not required by Contract Documents. The Contractor shall not install hazardous materials, including without limitation asbestos or polychlorinated biphenyl (PCB), in the Work.

§ 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 ~~fault or 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.

§ 10.5 PUBLIC SAFETY AND CONVENIENCE

§ 10.5.1 The Contractor shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

§ 10.5.2 The Contractor shall respond promptly to community concerns about disturbances as a result of construction practices.

§ 10.6 WEATHER PROTECTION

§ 10.6.1 Temporary weather protection of the Work is the responsibility of the Contractor as necessary to proceed in accordance with the Contractor's approved schedule and environmental conditions. Weather protection shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, masonry, sealant, gypsum sheathing, roofing, and interior finishes. Delays and costs resulting from the Contractor's failure to protect the Work from damage due to weather are the sole responsibility of the Contractor.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance from and maintain an occurrence-based Commercial General Liability Insurance Policy 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 Contractor's insurance shall provide personal injury, bodily injury and property damage liability to cover the Contractor's operations, including Subcontractors and suppliers of any tier; advertising injury; automobile liability, including but not limited to owned, non-owned and hired vehicles; on Work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU), employment related practices coverage, and stopgap employer's liability. The Contractor shall purchase and maintain such 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 and admitted to issue insurance in the State of Washington possessing an A.M. Best's policyholder's rating of B+ or better and a financial rating of no less than VIII and reasonably acceptable to the Owner. The Owner, the Architect, their consultants and employees, and any required governmental agencies and others designated in the Contract Documents shall be named as additional insureds under the Contractor's commercial general liability policy for all coverages required by Section 11.1 or as otherwise described in the Contract Documents. The Contractor's insurance shall include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:~~

- .1 \$2,000,000 per occurrence and \$2,000,000 per-Project aggregate for bodily injury liability including sickness, disease or death and \$2,000,000 bodily injury liability for all occurrences (other than automobiles);
- .2 \$2,000,000 per occurrence and \$2,000,000 per-Project aggregate for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of the use thereof caused by one occurrence and \$2,000,000 property damage liability for all occurrences;
- .3 As an alternate to subsections .1 and .2 above, the Contractor may insure for \$2,000,000 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate stop loss;
- .4 \$2,000,000 per accident and \$2,000,000 per-Project aggregate for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles;
- .5 \$2,000,000 for claims for damages insured by personal injury liability coverage (included and defined in the Commercial General Liability insurance policy) which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or (2) by another person;
- .6 \$2,000,000 per occurrence and \$2,000,000 per-Project aggregate for claims involving damages to a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or another employee;
- .7 \$2,000,000 per occurrence and \$2,000,000 per-Project aggregate for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Contractor's obligations under Section 3.18; and
- .8 In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$5,000,000.

§ 11.1.1.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of Final

Acceptance and termination of any coverage required to be maintained after final payment. Completed operations coverage shall remain in force for six (6) years after Final Acceptance and shall name the Owner, the Architect, their consultants and employees, and any required governmental agencies as additional insureds. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Employer's Liability Insurance (Stop Gap) with limits of at least \$1,000,000 each accident; \$1,000,000 disease each employee; and \$1,000,000 disease policy limit. Losses up to the deductible amount shall be the responsibility of the Contractor.

§ 11.1.1.2 Before any presence on site, commencing Work or exposure to loss can occur, the Contractor shall furnish the Owner with four (4) copies of Certificates of Insurance on AIA Document G705 or ACORD Certificate of Liability Insurance as evidence of all insurance required by the Contract Documents, including an endorsement to the insurance policies naming the Owner, the Architect, their consultants and employees, any required governmental agencies and others designated in the Contract Documents as additional insureds. No progress payment will be due until all such Certificates are furnished. All policies and certificates must be signed copies and shall contain a provision that coverages afforded under the policies cannot be materially altered (i.e. the coverages reduced, the limits decreased or the additional insured removed) allowed to expire, or cancelled without first giving forty-five (45) days prior written notice by certified mail to the Owner and Architect. The Contractor shall furnish to the Owner and the Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions of Section 3.18 are acknowledged. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Upon written request, the Contractor will provide a copy of its policies to the Owner.

§ 11.1.1.3 The Owner's specification or approval of the insurance in this Contract or of its coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts. Notwithstanding anything herein to the contrary, the Contractor shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project.

§ 11.1.1.4 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general aggregate limit. Also, the Subcontractors shall name the Contractor and the Owner and cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect, and their consultants and employees as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations, giving at least forty-five (45) days' notice of cancellation.

§ 11.1.1.5 The GMP includes an amount to pay the premium for such insurance and to name the Owner, the Architect, their employees, and others listed in the Contract Documents as additional insureds on all insurance policies required by this Section 11.1, except workers' compensation and employer's liability. There shall be no self-insured retention without the prior written approval of the Owner. If the Owner is damaged by the failure of the Contractor to maintain any of the insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

§ 11.1.1.6 Insurance requirements to operate a drone over the construction site or any other school district property. If Contractor or its Subcontractors of any tier use or operate a drone or unmanned aircraft on or over the construction site or any other property of the Owner, Contractor shall provide to Owner evidence of sufficient insurance such as aircraft

liability insurance to cover any damages, including bodily injury or property damage, caused by the operation and use of such drone or unmanned aircraft prior to its use on or above the construction site or any other property of the Owner. If a Subcontractor of any tier is the operator of such a drone or unmanned aircraft, the evidence of such insurance shall be provided by that Subcontractor. The limit of liability shall be at least \$1,000,000 each occurrence.

§ 11.1.2 Payment and Performance Bonds. The Contractor shall provide surety bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the Contract Sum plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." The Contractor shall provide such bonds as a part of the Contract Sum. All bonds shall be 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. The surety company shall be acceptable to the Owner, shall have an A.M. Best rating of "A minus" or better and a financial rating of no less than "VIII," and shall be admitted and licensed in the State of Washington. Within seven (7) days after the Owner's issuance of the notice of intent to award the Contract, the Contractor shall deliver evidence of its bondability to the Owner. Within seven (7) days after its execution of the GMP Amendment, the Contractor shall deliver two (2) copies of the bonds to the Owner and one (1) copy to the Architect. THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT IF THE REQUESTED EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK UNTIL SUCH SURETY BONDS ARE RECEIVED. THE OWNER MAY ALSO WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH BONDS ARE RECEIVED. Evidence of bondability shall include the percentage to be paid by the Contractor for increases in the GMP. The Contract Time shall be reduced by one (1) day for each day after ten (10) days that the surety bonds are not received by the Owner. The Contractor shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

§ 11.1.2.1 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance required by this Agreement or in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.

§ 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.

§ 11.2.4 Property Insurance

§ 11.2.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized and admitted to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction upon the entire Work at the site and any materials or equipment furnished or installed by the Owner on the Project, in the amount of the full insurable value thereof less costs of clearing, preparation and excavation of the site under this Agreement. Such property insurance may contain market-standard exclusions and endorsements. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion of the Project. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. This insurance shall insure against the perils of fire and extended coverage and physical loss or damage and shall provide "all risk" coverage for the interests of the Owner, the Contractor and Subcontractors as named insured and loss payee, as their respective interests appear. Upon written request, the Owner will provide a copy of its policy to the Contractor. Except for losses caused by the Owner or by natural disaster, losses up to the deductible amount or otherwise not covered by insurance are the responsibility of the Contractor.

§ 11.2.4.2 All tools and equipment of the Contractor and Subcontractors of any tier not intended as part of the construction or installation of the Work will be the sole responsibility of the Contractor.

§ 11.2.4.3 Upon the occurrence of a loss insured under the property insurance, the Owner shall pay the Contractor its just share of insurance proceeds received by the Owner, and by appropriate agreements, the Contractor shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. Any inconsistent policy provisions will supersede the provisions of this Section.

§ 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, Agreement, except such rights as they have to proceeds of such insurance. The Owner does not waive the subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. 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 that are required by the Contract Documents and that are 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 Owner's or the Architect's request or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, the Owner, or a governmental authority, be uncovered for the Architect's requesting party's examination and be replaced at the Contractor's expense without change in the Contract Time, Time or GMP.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~ Architect, the Owner, or governmental authority has not specifically requested to examine prior to its being ~~covered, the Architect covered and for which the Contract Documents did not require inspection, the Architect, the Owner, or the governmental authority~~ 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~~ make a claim for adjustment to the Contract Sum, GMP 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/Final Completion

The Contractor shall promptly correct Work rejected by the Architect or the Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial/Final 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 its consultant(s)' services, the Owner's services, and expenses made necessary thereby, shall be at the Contractor's expense. The Contractor shall not be entitled to make a Claim based on a notification by the Owner or Architect of nonconforming work.

§ 12.2.2 After Substantial Final Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within the later of (1) one year after the later of the date of Substantial Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or the Contract Documents, or (2) 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, so according to the requirements of this Section 12.2.2 with no change in the GMP, 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. an explicit written acceptance of such condition. If the Contractor does not promptly in accordance with the provisions of this Section 12.2.2 initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may without further notice dispose of materials and equipment as it sees fit, and the Contractor will be liable for all associated costs. This correction period of one (1) year 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 performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), the Contractor shall initiate corrective Work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a single classroom, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door lock not working, etc.), the Contractor shall initiate corrective Work on site within two (2) working days and shall complete corrective action within five (5) working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective Work on site within fourteen (14) days and shall complete corrective action within twenty-eight (28) days.

§ 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 Final Completion by the period of time between Substantial Final 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. GMP will be reduced, in the Owner's sole discretion, by the greater of the (1) cost of correction or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents.~~ 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 internal 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 without regard to its choice of law rules.~~ The venue for any litigation shall be in Superior Court in the county in which the project is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect 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. The Contractor also shall not assign to any third party any Claims it may have against the Owner arising under the Contract or otherwise related to the Project.

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

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty (30) days written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 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. The Contractor's sole remedy for Claims, disputes and other matters in question, direct or indirect, arising out of or relating to the Contract Documents or breach thereof, except Claims that have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 15.

§ 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.

§ 13.3.3 If any portion of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at an appropriate time as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. authorities having jurisdiction. The Contractor shall plan and allow adequate time for all tests, inspections, and approvals, and shall not be entitled to an extension of the Contract Time for any delay associated with a test, inspection, or approval. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections, and approvals. necessary tests, inspections, and approvals, except that the Contractor will be responsible for any costs of retesting and any extra costs caused by the Contractor. The Contractor shall give the Architect and the Owner timely notice of when

and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. 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 Owner and 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. The Contractor shall provide the Owner and Architect at least forty-eight (48) hours' written notice prior to all tests and inspections.

§ 13.4.7 If the Owner is responsible under the Contract Documents, law or regulation to pay for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or reinspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within thirty (30) days of billing, the Owner has the option to pay the charges directly and backcharge the Contractor on the next progress payment for the amount paid plus a fifteen percent (15%) handling fee.

§ 13.4.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owner's representatives, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery. Entities performing inspections and/or testing do not have the authority to direct the Contractor's means and methods, including the Contractor's safety practices, and are not agents or representatives of the Owner or Architect. Inspections that meet code requirements shall not take precedent over more stringent requirements in the Contract Documents.

§ 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 as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2%.~~

§ 13.6 STATUTES AND OTHER REQUIREMENTS

The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

§ 13.6.1 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, "Registration, Licensing of Contractors," the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27, "Registration of Contractors." The Contractor shall also have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

§ 13.6.2 Law against Discrimination. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60, "Discrimination."

§ 13.6.3 Provisions for Aged and Handicapped Persons. Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92, "Provisions in Buildings for Aged and Handicapped Persons," and the Americans with Disabilities Act.

§ 13.6.4 Safety Standards. The Contractor shall comply with pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."

§ 13.6.5 Unemployment Compensation. Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for an acceptable bond.

§ 13.6.6 Drug-Free Workplace. The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

§ 13.6.7 Tobacco-Free Environment. Pursuant to RCW 28A.210.310, smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products is prohibited on all school district property.

§ 13.6.8 Weapons-Free Environment. The Contractor and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any Owner property any firearm or any other type of weapon described in either RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the Owner's discretion.

§ 13.6.9 Asbestos Removal. To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW, "Health and Safety--Asbestos," and any provisions of the Washington Administrative Code promulgated thereunder, and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor.

§ 13.6.10 School Security. All contractors, suppliers, and visitors who come onto school property shall be required to display an identification badge on their person. Such badge(s) may be obtained from the Owner. Contractor shall be required to administer the distribution of badges and maintain a sign-in and sign-out log. All badges are to display the signature of the Project Superintendent. All Owner supplied badges shall be returned before retainage is released.

§ 13.6.11 Inadvertent Discovery of Human Remains. Any human remains that are discovered during Project-related ground disturbance, construction, maintenance, or operation activities will be treated with dignity and respect. In the event that human remains are discovered during ground disturbance, construction, maintenance, or operation of the Project, the following procedures are to be followed to ensure compliance with RCW 68.60: Abandoned and Historic Cemeteries and Historic Graves, and RCW 27.44: Indian Graves and Records. If ground-disturbing activities

encounter human skeletal remains during the course of the Project, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the Pierce County Coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The Pierce County Coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the Pierce County Coroner determines the remains are non-forensic, then they will report that finding to DAHP, who will then take jurisdiction over the remains. DAHP will notify any appropriate cemeteries and all affected Tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Native American or non-Native American and report that finding to any appropriate cemeteries and the affected tribes. DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 ~~The~~Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of ~~30-sixty (60)~~ 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 improperly 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 (100%) 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, (7) days' notice to the Owner and Architect (during which period the Owner shall have the right and opportunity to cure),~~ terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work ~~not~~ executed, and reasonable, direct costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less remaining Contingency and the Contractor shall not be entitled to recover anticipated profit on Work not performed.

§ 14.1.4 If the Work is stopped for a period of ~~60-sixty (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 (7) additional days' notice to the Owner and the Architect, the Architect (during which period the Owner shall have the right and opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less remaining Contingency and the Contractor shall not be entitled to recover anticipated profit on Work not performed.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 ~~The Owner may terminate the Contract may, upon seven (7) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the Work or any portion of the Work or the Contract for cause if the Contractor~~

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

- ~~.3 repeatedly disregards fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; authority having jurisdiction;~~
- ~~.4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion or Final Completion of the Work within the Contract Time;~~
- ~~.5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;~~
- ~~.6 fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project having contact with children who has been convicted of or pled guilty to a felony crime involving children; or~~
- ~~.4—.7 otherwise is guilty of a material or substantial breach of or default under 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 (7) days' notice, terminate employment of the Contractor on all or a portion of the Work 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; the Work; and~~
- ~~.4 Take or direct any or all of the actions in Section 14.5.1.~~

§ 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~~ GMP 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. The remaining Contingency, if any, shall accrue to the Owner. 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~~ This obligation for payment shall survive termination of the Contract.

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2 or otherwise for cause, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

§ 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~~ GMP and Contract Time shall be adjusted for ~~increases~~ changes in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the ~~Contract Sum~~ shall include profit. GMP shall be consistent with the terms of the Contract Documents. 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 (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or 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 consistent with the Contract Documents for Work properly executed and reasonable, direct costs necessarily incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement to termination of Subcontracts.~~ The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the GMP as reduced by the amount of payments otherwise made, by the larger of (1) the actual value or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Sections 14.5.1.6 or 14.5.1.7.

§ 14.5 EFFECTS OF TERMINATION BY OWNER

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 stop Work under the Contract on the date and as specified in the notice of termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title, and deliver to the entity or entities designated by the Owner, 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, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 use commercially reasonable efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

§ 14.5.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 any Claim the Owner may have against the Contractor;
- .3 an amount necessary to protect the Owner against 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 provisions of Section 14.5.1.7, and not otherwise recovered by or credited to the Owner
- .5 remaining Contingency.

§ 14.5.3 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any Claim by the Contractor for an equitable adjustment under this Section must be asserted within sixty (60) days from the effective date of the partial 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 the Contract Documents.

§ 14.5.5 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.6 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

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, adjustment or interpretation of the Contract terms, 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.~~ Contract Documents. 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. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a daily report, nor any log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal or a proposal request, nor a notice of a potential or future Claim shall constitute a Claim.

§ 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.~~ law and within the time limits identified in the Contract Documents. 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, including the dispute resolution process, and 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 maintain the Contractor's construction schedule, and the Owner shall continue to make payments of undisputed amounts 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.~~

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§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the ~~Contract Sum, GMP,~~ written notice as provided in Section 15.1.3 this Article 15 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. ~~the Claim, and a written Claim must be made in accordance with this Article 15, or it will be waived. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15. The Contractor shall not be entitled to an increase in the GMP or Contract Time arising out of an error or conflict in or among the Contract Documents where the Contractor failed adequately to review the Contract Documents or failed timely to report the error or conflict to the Architect and Owner in a timely manner consistent with the requirements of the Contract Documents. 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.~~ written notice as provided in this Article 15 shall be given, and a written Claim must be made in accordance with Article 15, or it will be waived. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby. If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not a change in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP.

§ 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-construction,~~ and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The substantiated change in the Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be calculated as the number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion less the total net accumulated number that reasonably should have been expected for the same period based on the historical data.

§ 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 without limitation:

- .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 and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except for losses on other projects, for interest or financing costs, and for loss of profit (including anticipated profit arising directly from the Work.~~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. Nothing in this

Section 15.1.7 shall be deemed to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect, or consequential damages alleged by a third party.

§ 15.1.8 False Claims

The Contractor shall not make any negligent or fraudulent misrepresentations, concealments, errors, omissions, or inducements to the Owner in the formation or performance of this Agreement. If the Contractor or a Subcontractor of any tier submits a false or frivolous Claim to the Owner, which for purposes of this Section is defined as a Claim based in whole or in part upon a materially incorrect fact, statement, representation, assertion, or record, the Owner shall be entitled to collect from the Contractor by offset or otherwise (without prejudice to any right or remedy of the Owner) any and all costs and expenses, including investigation and consultant costs, incurred by the Owner in investigating, responding to, and defending against such false or frivolous Claim.

§ 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.

§ 15.5 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.5.1 In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except Claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise. To the extent that the Owner and Contractor agree to a partnering process to help resolve disputes, such process shall be in addition to, and not in place of, the mandatory dispute resolution procedures in the Contract Documents.

§ 15.5.2 Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, the Contractor shall submit a written notice of any Claim to the Owner and the Architect within fourteen (14) days of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all Claims, the Contractor shall submit a written Claim as provided herein within thirty (30) days of submitting the notice. Claims shall include a clear description of the Claim and any proposed change in the GMP (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path and other information referenced in Section 8.3.2) and shall provide all data supporting the Claim, including without limitation a complete explanation as to why the relief sought is not within the scope of the Contract Documents. The Contractor may delay submitting data by an additional fourteen (14) days if it notifies the Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled and may not contain reservations of rights without the Owner's written approval; any such unapproved reservations of rights shall be without effect. Any Claim of a Subcontractor of any tier may be brought only through, and after review by, the Contractor. For the purposes of calculating such time periods, an "event giving rise to a Claim," among other things, is not a Request for Information but rather is a response that the Contractor believes would change the GMP and/or Contract Time. The fact that the Owner and the Contractor may consider, discuss or negotiate an untimely or waived Claim shall in no way be deemed to constitute a waiver of any notice or other provisions of the Contract Documents.

§ 15.5.3 Notice and Claims. All notices and Claims shall be made in writing as required by the Contract. Any notice of a Claim of the Contractor against the Owner and any Claim of the Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver approved by the Owner's Board of Directors. The fact that the Owner and the Contractor may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute a waiver of the provisions of the Contract Documents unless the Owner and Contractor sign an explicit, unequivocal waiver approved by the Owner's Board of Directors. The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the Contractor and Owner agree that the Owner is prejudiced by the Contractor's failure to timely submit notices and/or Claims and the Owner shall not be required to prove or establish actual prejudice to enforce the notice or Claim provisions of the Contract.

§ 15.5.4 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but are 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.5.5 At any time following the Owner's receipt of the written Claim, the Owner may require that an officer of the Contractor, a principal of the Architect, and the Owner's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved during such meeting, the Contractor may bring no litigation against the Owner unless the Claim is first subject to nonbinding mediation as described in this Article 15. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.5.6 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.

§ 15.5.7 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.

§ 15.5.8 In accordance with RCW 39.10.350, the Owner will respond to any Claims no later than sixty (60) calendar days after the receipt by the Owner of related documentation from the Contractor. If the Owner does not respond in writing to a Claim within sixty (60) days, the request is deemed denied

§ 15.6 Mediation

§ 15.6.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived pursuant to the terms of the Contract Documents, shall be subject to mediation as a condition precedent to binding dispute resolution. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.6.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party may file the request with the American Arbitration Association ("AAA") in accordance with its Construction Industry Mediation Procedures currently in effect, with a copy to the other party, and the mediation shall be administered by the AAA. Mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending completion of mediation, unless stayed for a longer period by agreement of the parties or court order.

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

§ 15.6.4 An officer of the Contractor and the Owner's Superintendent or designee must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Architect or Subcontractors, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner.

§ 15.7 Litigation

§ 15.7.1 Any disputes that are not resolved through negotiations or mediation shall be resolved by litigation and not by arbitration. The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article 15. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the date of Substantial Completion approved in writing by the Owner or (b) sixty (60) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation (the time period between receipt by the non-requesting party of a written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law).

§ 15.7.2 The Owner may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

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 this certification at 13:51:33 PT on 10/26/2022 under Order No. 2114314097 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)