

**DOCUMENT 00700**  
**GENERAL CONDITIONS**

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## ARTICLE 1 – DEFINITIONS

The terms used in these General Conditions and within the Contract Documents have the following meanings assigned to them applicable in both the singular and plural tense. Certain terms are fully capitalized for no other reason than ease of reading.

- 1.1 Addenda – Additional written or graphical instructions issued prior to the opening of bids, which clarify, modify, correct, amend, add, delete and/or otherwise change the Division 00 - Bidding Requirements or other Contract Documents.
- 1.2 Application for Payment – The OWNER approved invoice form, along with other supportive documentation as specified in the Contract Documents, to be certified and submitted by CONTRACTOR, to request progress and/or final payment.
- 1.3 ARCHITECT – The person, firm, corporation or entity licensed to practice architecture as identified in the Bidding Documents.
- 1.4 ARCHITECT Consultant – The person, firm, corporation or entity having a contract with ARCHITECT to furnish independent consulting services relative to the Work.
- 1.5 Asbestos Containing Construction Material – Any manufactured construction material containing more than 0.1% asbestos by weight.
- 1.6 Bidding Documents – All of the Division 00 Requirements and the proposed Contract Documents.
- 1.7 Change Order Proposal – A written instrument prepared and issued by CONTRACTOR setting forth proposed adjustments to the Contract Amount, Milestones and/or Contract Time, if any, in response to a directed and/or proposed addition, deletion or revision in the Work.
- 1.8 Construction Directive – A written directive by ARCHITECT or OWNER, on or after the Effective Date of the Contract, directing CONTRACTOR to proceed regarding an issue of dispute, or requiring CONTRACTOR to take a specified action regarding the Work, Project and/or Contract. A Construction Directive may or may not always result in a change to the Contract Amount or Contract Time.
- 1.9 Contract – The Contract is comprised of all of the Contract Documents. The Contract represents the entire, integrated agreement between CONTRACTOR and OWNER and supersedes all prior negotiations, representations, or agreements, written or oral. The Contract can only be amended by a written Change Order. The Contract is made solely for the benefit of CONTRACTOR and OWNER and no others. The Contract shall not create a contractual relationship of any kind between CONTRACTOR and ARCHITECT, or between OWNER and any Subcontractor, supplier or anyone other than CONTRACTOR.
- 1.10 Contract Amount – The dollar amount stated in the agreement payable by OWNER to CONTRACTOR. The Contract Amount may be increased or decreased only by Change Order.
- 1.11 Contract Documents – The Bid and Acceptance Form, Addenda, documentation accompanying the bid and any post bid documentation submitted after the Notice of Intent to Award, the Notice to Proceed, the bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings, together with all Change Orders,

Construction Directives, and ARCHITECT written interpretations and clarifications issued pursuant to General Condition Article 9.4.

Reports, drawings and/or other documents referenced in Section 00300, Product Data and Sample submittals reviewed relative to Article 6.50 and 6.51 are not Contract Documents. In addition, Shop Drawings are not Contract Documents unless they bear the signature and seal of the Project Architect of Record.

- 1.12 Contract Time - As stated in the Contract, the Contract Time is the original duration of the Contract plus Change Order adjustments.
- 1.13 CONTRACTOR - The person, firm, corporation or entity with whom the OWNER has entered into the Contract.
- 1.14 Day - Means calendar day in every case.
- 1.15 Defective - When proceeding the term Work, it references Work deemed to be unacceptable, faulty, unsuitable, unsightly or otherwise not in compliance with the Contract Documents including any inspection, standard, test, submittal, and/or approvals required by the Contract Documents.
- 1.16 Deferred Approval - Those portions of the design, if any, requiring CONTRACTOR preparation and submittal, within the specified time, to the ARCHITECT and/or other approval authorities.
- 1.17 Drawings - Pictorial or graphical portions of the Contract Documents, prepared by or on behalf of the ARCHITECT, denoting the scope, design, extent, location, character, and dimensions of the Work to be performed and may include plans, elevations, sections, details, schedules and diagrams, etc., however, Shop Drawings are not Drawings as so defined herein.
- 1.18 Effective Date of the Contract – The date on which OWNER Board of Education approves and/or ratifies the Contract or if OWNER Board of Education has delegated such authority in writing to an OWNER employee, then the date on which the designated OWNER employee signs the Contract.
- 1.19 Final Completion – When, in fact, all Contract requirements of the CONTRACTOR have been met.
- 1.20 GDOE – Georgia Department of Education
- 1.21 General Requirements – Division 01 Sections of the Specifications.
- 1.22 Inspector – Authority having jurisdiction to inspect the work.
- 1.23 Lead Containing Paint – Means paint or other surface coatings that contain an amount of lead equal to or greater than .06% lead dry weight (600 parts per million).
- 1.24 Milestones – Designated dates, if any, as set forth in the Detailed Construction Schedule in which Work or portions thereof are required to be started and/or completed in accordance with the Contract Documents.

- 1.25 Notice of Intent to Award – The notice issued by OWNER to the successful Offeror advising of OWNER intent to execute and deliver Contract to CONTRACTOR contingent upon timely completion of and compliance with terms and conditions specified in said notice.
- 1.26 Notice of Completion – A notice by OWNER recorded with the County Recorder upon Final Completion.
- 1.27 Notice to Proceed – A notice issued by OWNER to CONTRACTOR establishing the (1) date of Contract Time commencement, (2) date CONTRACTOR is authorized to commence performance of CONTRACTOR obligations in accordance with the Contract Documents.
- 1.28 OWNER – Fulton County Board of Education.
- 1.29 OWNER Consultant – The person, firm or corporation having a Contract with OWNER to furnish independent professional services relative to the Work and/or Project.
- 1.30 OWNER Forces – Is defined as Work undertaken by force account and/or Contract executed with other CONTRACTOR(S) to complete portions of the project.
- 1.31 OWNER Representative (OR) – The designated authorized representative of OWNER who shall provide administration of the Contract relative to the Project, Work, or any part thereof. OR shall be synonymous with the term, OWNER.
- 1.32 Partial Use or Occupancy – Use or occupancy by OWNER of a partially completed portion, part, space or area of the Work, prior to Substantial Completion of the Work.
- 1.33 Product Data – CONTRACTOR furnished literature, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, catalog cuts, color charts, templates, installation and maintenance instructions, test data, agency or regulatory approvals, or other required product information furnished by CONTRACTOR relative to the Work.
- 1.34 Project – The term Project is used to refer to the Work of this Contract and it may also refer to Work by OWNER, Separate Work Contract and/or other entities with whom CONTRACTOR must coordinate the Work of this Contract.
- 1.35 Request for Information – A written instrument prepared by CONTRACTOR and issued to ARCHITECT requesting clarification of the Contract Documents.
- 1.36 Request for Proposal – A written instrument issued by ARCHITECT directing CONTRACTOR submission of a written estimate detailing the proposed changes to the Contract Amount, Milestones and/or Contract Time in response to the proposed Work contained therein.
- 1.37 Samples – CONTRACTOR furnished physical specimens such as swatches, natural materials, materials, fabricated items, equipment, devices, appliances, cuts, containers, color Boards, textures, fabrications, finishes, or other required samples furnished by CONTRACTOR relative to the Work.
- 1.38 SBC – Standard Building Code including any State of Georgia Amendments.
- 1.39 Schedule of Values – A written instrument using AIA Form G703 to enable CONTRACTOR to certify and subdivide the quantities and costs aggregating the total

- Contract Amount into sufficiently detailed component parts in order to serve as the basis for progress payments during construction.
- 1.40 Separate Work Contract – OWNER contract with a separate contractor to perform work or provide services in conjunction with the Project and/or Work of this Contract.
  - 1.41 Shop Drawings – CONTRACTOR furnished original drawings such as illustrations, diagrams, schedules, fabrications, erection, coordination, layout, setting, details, standards, performance charts or curves, installation, routing, isometric, wiring, control, piping, or other required shop drawings furnished by CONTRACTOR relative to the Work.
  - 1.42 Specifications – Those portions of the Contract Documents consisting of the written technical and/or administrative descriptions of materials, equipment, systems, codes, regulations, procedures, standards, workmanship, services, facilities, supplies, instructions, transportation, quality, etc., as applied to the Work.
  - 1.43 Subcontractor – The person, firm, corporation or entity executing a direct contract with CONTRACTOR or with any subcontractor for the performance of a portion of the Work.
  - 1.44 Substantial Completion – The stage in the progress of the Work when all of the requirements of the Contract are substantially performed and completed so OWNER can have beneficial use and occupancy of the Work as intended under the Contract, subject only to remaining minor and trivial defective Work, if any.
  - 1.45 Subsurface Facility – All underground or below grade facilities and/or improvements, including but not limited to, any and/or all encasements such as pipelines, wells, conduits, raceways, duct banks, ducts, cables, conductors, sensors, manholes, valve boxes, metering devices or other such facilities which collect, furnish, supply, distribute, and/or transport to this or any other site or property electricity, telephone, data, steam, gases, petroleum, cable or satellite signals, sewage, signal systems, water, storm drainage, traffic signals, or other control systems.
  - 1.46 Supplementary Conditions – The Contract Document section amending and/or supplementing these General Conditions.
  - 1.47 Work – All of the terms and conditions set forth in the Contract Documents, including the various separately identifiable parts thereof to be furnished thereunder. The Work shall include, without limitation, all labor, materials, apparatus, supplies, services, facilities, utilities, transportation, manuals, warranties, training, and the like, necessary for the CONTRACTOR to faithfully perform and complete all of its obligations under the Contract.
  - 1.48 Unit Price Work - Work which is measured and paid for by OWNER to CONTRACTOR on a unit price basis.

END OF ARTICLE

## **ARTICLE 2 – PRIOR TO CONSTRUCTION**

### **2.1 *Furnishing of Contract Documents***

After the Effective Date of the Contract, CONTRACTOR will be furnished such copies of the Contract Documents as set forth in the Instructions to Offerors.

### **2.2 *Notice to Proceed and Contract Time Commencement***

The Contract Time will commence on the date specified in the Notice to Proceed.

### **2.3 *No Commencement of Work without Insurance and Bonds***

CONTRACTOR shall not commence Work on the Project site or elsewhere before the effective date of the insurance and bonds CONTRACTOR is required to obtain by the Contract Documents. The established date of commencement of the Contract Time will not be changed by the effective date of such insurance and/or bonds.

### **2.4 *Before Starting Construction of the Work***

In addition to all pre-bid obligations of the CONTRACTOR, and prior to commencing any and each portion of the Work, CONTRACTOR shall carefully examine all of the Contract Documents and any other information available to CONTRACTOR relative to materials and methods of construction of the Work and/or Project requirements. CONTRACTOR shall file any needed Request for Information within a reasonable time prior to the commencement of any Work for any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation of the intent of the Contract Documents. If CONTRACTOR performs, permits, or causes the performance of any portion of the Work under the Contract Documents, which in the exercise of reasonable care should have known to be in error, inconsistent, ambiguous, or not sufficiently detailed or explained, CONTRACTOR shall bear any and all costs arising there from including, without limitation, the cost of correction thereof without any corresponding adjustment to the Contract Amount, Milestones and/or the Contract Time.

### **2.5 *Preliminary Matters***

Within ten (10) days after the Effective Date of the Contract CONTRACTOR shall submit to ARCHITECT and OR for review:

2.5.1 in accordance with applicable Division 01 Requirements and Georgia Law, a certified Schedule of Values which includes a detailed breakdown of the Contract Amount for the Work, Contract and/or Project site in sufficient detail to serve as the basis for construction progress payments during the first 30 days following the date established in the Notice to Proceed. CONTRACTOR shall certify the accuracy of the Schedule of Values, including, without limitation, the applicable provisions of the Division 01 General Requirements;

2.5.2 a cash flow schedule of estimated monthly payment requests due CONTRACTOR estimating the values and construction time of the various portions of the Work to be performed by CONTRACTOR, Subcontractors, and/or material and equipment suppliers;

2.5.3 the name, address, telephone number, fax number, license number, and

classification of all Subcontractors and of all other parties furnishing labor, material, or equipment to CONTRACTOR, along with the amount of each such subcontract or the total price of such labor, material, and equipment needed for each Subcontractors total portion of the Work;

- 2.5.4 in accordance with applicable Division 01 Requirements, a Preliminary Construction Schedule with milestones based upon Section 01010 Appendix A, indicating the duration in days of starting and completing the Work, including but not limited to, any and all Milestone dates specified in the Contract Documents;
- 2.5.5 in accordance with applicable Division 01 Requirements and in conjunction with the Preliminary Construction Schedule as specified in Article 2.5.4, a preliminary schedule of Shop Drawing, Material List, Product Data and Sample submittals setting forth the scheduled durations for submission, review and processing.

## 2.6 ***Job Start Meeting***

Within twenty (20) days after the Effective Date of the Contract, but prior to the issuance of the Notice to Proceed, CONTRACTOR and all Subcontractors listed in bid documents of CONTRACTOR are required to attend a mandatory job start meeting conducted by OR and further attended by, but not limited to, ARCHITECT. Such proceedings shall be electronically recorded with the following, but not limited to, topics discussed:

- 2.6.1 OR and ARCHITECT shall review, discuss, and recommend corrections to CONTRACTOR Preliminary Construction Schedule as referenced in Articles 2.5.4, 2.5.5 and the Schedule of Values as referenced in Article 2.5.1. OR, ARCHITECT and CONTRACTOR, shall review required procedures for handling submittals, processing of Applications for Payment, identification of Owner Representative as per Article 8.1, and the roles, duties and limitations of OR, ARCHITECT and CONTRACTOR.
- 2.6.2 Other related items as specified in, but not limited to, the Division 01 General Requirements and/or Contract Documents.

## 2.7 ***Survey of Existing Conditions***

In addition to all pre-bid obligations of the CONTRACTOR, and prior to the commencement of any Work, CONTRACTOR shall perform a thorough survey that shall include but is not limited to photographing and otherwise memorializing any and all existing conditions, defects and improvements of the Project site, adjacent sites, utilities and public right of way approaches thereon (“existing conditions survey”). The existing conditions survey shall be filed with OR with copies transmitted to ARCHITECT. The CONTRACTOR shall notify the OR in writing within three (3) days of becoming aware of any change and/or damage to the Project site, adjacent sites, utilities and public right of way approaches thereon, that occur after commencement of any Work. The notification shall include documentation showing the changes to the existing conditions survey and the individual(s) responsible for the changes and/or damages.

2.8 ***Detailed Construction Schedule***

Unless otherwise noted in the Contract Documents, and within thirty (30) days after the Notice to Proceed, CONTRACTOR shall submit a Detailed Construction Schedule using Microsoft Project (Version 2010 or later) software, based on the corrected Preliminary Construction Schedule described in Article 2.6.2 and in full compliance with related Sections of the Division 01 General Requirements.

- 2.9 OWNER shall provide an integrated project control system for document management, which shall be accessible by CONTRACTOR, ARCHITECT/ENGINEER and OWNER through a web-based program. The CONTRACTOR, ARCHITECT/ENGINEER and OWNER shall use the designated document management and control software system to track and control all construction project documentation that shall include, but not be limited to, Contact Directory, Request for Information, Request for Proposal, Change Order Proposal, Construction Directive, Change Orders, Minutes of Meetings, Pay Requests, Schedules and all OWNER and CONTRACTOR communications such as Correspondence, Transmittals, Insurance Certificates, Submittals, Action Items, Daily Reports and Punch Lists required under any Contract Documents and this Contract. However, any notice required under Article 16 of the Contract shall conform to the requirements stated therein.

END OF ARTICLE

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### **ARTICLE 3 – THE CONTRACT DOCUMENTS**

#### **3.1 *Contract Documents Complementary and Inclusive***

The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be the responsibility of the CONTRACTOR to incorporate into the Work and perform as if shown or mentioned in both.

#### **3.2 *Intent of the Drawings and Specifications***

The intent of the Drawings and Specifications is to describe the Work to be performed by CONTRACTOR. The Specifications describe Work which cannot be readily indicated on the Drawings such as quality of materials, workmanship, and execution whereas the Drawings generally describe dimensions, elevations and general layout of the Work. It is not the intent to specify every item of the Work in the Specifications, which is shown on the Drawings, or to show on the Drawings all items of the Work described or specified in the Specifications even if such items could have been shown and/or specified. All aspects of the Work, on the Drawings or in the Specifications, or which are reasonably inferable there from as being necessary to complete the Work, shall be incorporated into the Work and performed by CONTRACTOR whether or not such aspects of the Work are expressly covered in the Drawings or the Specifications. It is intended the Work be of sound, quality construction, and CONTRACTOR is responsible for the inclusion of all direct and indirect costs and expenses to cover all items indicated, described, or implied in the Work to be performed.

#### **3.3 *Ambiguity, Conflict, Difference or Discrepancy***

In the event there is an ambiguity, conflict, difference or discrepancy between the various Contract Documents, then the priorities listed in Article 3.14 shall govern unless noted otherwise in this Article. Without limiting CONTRACTOR obligation to identify conflicts for resolution, it is intended the more stringent, higher level of quality, greater quantity and/or higher level of workmanlike manner shall prevail and control. If discrepancies in the Contract Documents are not corrected by Addenda during the bid period, CONTRACTOR represents and warrants the scope and amount of its bid includes all materials, supplies, equipment, services, facilities, apparatus, and methods of construction that provides for the higher cost, quantity and quality.

#### **3.4 *Conformance with Laws***

In addition to all pre-bid obligations of the CONTRACTOR, and before commencing any portion of the Work, CONTRACTOR shall exercise reasonable care to review the Contract Documents from a construction standpoint for conformance and compliance with laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction portion of the Project. In the event CONTRACTOR observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, CONTRACTOR shall provide notice to ARCHITECT and OR. Unless specifically stated otherwise in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any violation and/or inconsistency between the provisions of the Contract Documents and the provisions of any laws, ordinances, codes, rules and regulations applicable to the Work, unless such application of the provisions of the Contract Documents would directly result in a violation of such laws, ordinances, codes, rules, and/or regulations. In the event the

requirements of Article 3.4 or the written interpretation or clarifications of ARCHITECT do not resolve the violation or inconsistency the decisions and directives of OR shall be final for the purpose of proceeding with the Work. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

**3.5 *Priority of Addenda***

In addition to the priorities listed in Article 3.14, Addenda shall govern over all other Contract Documents to the extent there is a conflict. Subsequent Addenda issued shall govern over prior Addenda only to the extent specified and only to the extent there is a conflict.

**3.6 *Division of Contract Documents***

The Contract Documents, including, without limitation, the Specifications, are divided into titled sections for convenience only and not to dictate or determine the trade or craft involved.

**3.7 *Similar Words of Import***

Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “provide,” “furnish,” “install,” “complete,” or words of similar import are used, it shall mean to put in place for the intended use or operation. “Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by ARCHITECT and/or OR is intended unless otherwise stated.

**3.8 *General Conditions, Supplementary Conditions and General Requirements***

The General Conditions, Supplementary Conditions and Division 01 General Requirements are a part of each and every section of the Contract Documents.

**3.9 *Brevity in Abbreviations***

The Contract Documents are written in an abbreviated form and may not include complete sentences.

**3.10 *Singular and Plural Tense***

Words in the singular shall include the plural whenever applicable or the context so indicates or requires.

**3.11 *Metric Units of Measurement***

The Contract Documents may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1 “(25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

3.12 ***Standard Technical Specifications of Societies, Institutes, Associations, Etc.***

Any reference to standard technical specifications of any society, institute, association, or governmental authority is a reference to the respective organization's standard technical specifications, which are in effect on the date of bid submission for the Work. If applicable standard technical specifications are revised before completion of any part of the Work, CONTRACTOR may, if acceptable to ARCHITECT and OR, perform such Work in accordance with the revised standard technical specifications. The standard technical specifications, except as modified in the Contract Documents, shall have full force and effect as though printed in the Contract Documents. Before commencing any portion of the Work, CONTRACTOR shall check and review the Contract Documents from a construction standpoint for conformance and compliance with the provisions of all standard technical specifications, listed or otherwise. In the event CONTRACTOR observes a conflict, ambiguity or discrepancy between the provisions of the Contract Documents and standard technical specifications, CONTRACTOR shall provide notice to ARCHITECT and OR and shall ensure such conflict, ambiguity or discrepancy is corrected in the prescribed manner prior to the commencement of said portion of the Work. Unless stated otherwise in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, ambiguity or discrepancy between the provisions of the Contract Documents and standard technical specifications. In the event the requirements of Article 3.12 or the written interpretation or clarifications of ARCHITECT do not resolve the conflict, ambiguity or discrepancy the decisions and directives of OR shall be final for the purpose of proceeding with the Work. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within 10 days of the date of issue of the Construction Directive.

3.13 ***Absence of Modifiers***

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3.14 ***Rules of Contract Document Interpretation***

3.14.1 In the event of conflict between the various sections of the Contract Documents, the following order of priority shall govern:

3.14.1.1 Offer and Acceptance Form as set forth in Section 00400;

3.14.1.2 Addenda as specified in Article 3.5;

3.14.1.3 Supplementary General Conditions;

3.14.1.4 General Conditions;

3.14.1.5 Division 01 General Requirements;

3.14.1.6 Divisions 02-16;

3.14.2 Where applicable, the requirements approved by other authorities having jurisdiction over any item submitted as a Deferred Approval shall take precedence over any previously issued Addenda, Drawing or Specification.

3.14.3 In the event of conflict between the Drawings and Specifications, the Specifications shall generally govern as to quality of materials, workmanship, and execution whereas Drawings generally govern dimensions, elevations and layout of the Work. In case of conflict between the Drawings and Specifications, a conflict in the Drawings or a conflict in the Specifications, it is the intent of the Contract Documents to require the CONTRACTOR to provide the more stringent, higher quality of material and/or workmanship, and/or greater quantities into the Work.

3.14.4 In the event the written clarifications or interpretations of ARCHITECT create a conflict within the Contract Documents, the decision and directives of OR shall be final for the purpose of proceeding with the Work. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

### 3.15 ***Ownership and Use of ARCHITECT Drawings, Specifications and Other Documents***

The Drawings, Specifications, and the other Contract Documents prepared on behalf of OWNER are instruments of the services of ARCHITECT and prepared for OWNER. Neither CONTRACTOR, Subcontractor, or Material or Equipment Supplier shall own or claim a copyright in the Drawings, Specifications, and other Contract Documents prepared by ARCHITECT, and unless otherwise indicated, ARCHITECT shall be deemed the author of them all. All copies of them, except CONTRACTOR record document set, shall be returned or suitably accounted for to ARCHITECT upon completion of the Work. Drawings, Specifications, and other Contract Documents prepared by ARCHITECT, and copies thereof furnished to CONTRACTOR, are for use solely with respect to the Work. They are not to be used by CONTRACTOR, Subcontractor, or material or equipment supplier on other Work or for additions to the Work outside the scope of this Work without the specific written consent of OWNER. CONTRACTOR, Subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of Drawings, Specifications, and other Contract Documents prepared by ARCHITECT appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Work is not to be construed as publication in derogation of any property interest or other reserved right.

### 3.16 ***Contract Document Amendment and Supplements***

3.16.1 After the Effective Date of the Contract the Contract Documents may be changed, altered, modified, amended and/or supplemented at any time and from time to time in order to add, delete and/or otherwise revise the Work and/or to modify the terms and conditions contained therein. The Contract Documents shall be amended and/or supplemented by one or more of the following ways:

3.16.1.1 a Change Order;

3.16.1.2 a Construction Directive.

- 3.16.2 In addition, supplements to the requirements of the Contract Documents and/or minor deviations and/or variations in the Work may be authorized and accomplished in one of the following ways:
- 3.16.2.1 ARCHITECT review of a Shop Drawing, Product Data or Sample subject to the provisions of Articles 6.50 and 6.51;
  - 3.16.2.2 ARCHITECT written interpretation or clarification;
  - 3.16.2.3 OR written interpretation or directive.

END OF ARTICLE

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## ARTICLE 4 - LAND AVAILABILITY, PHYSICAL AND SUBSURFACE CONDITIONS AND REFERENCES

### 4.1 *Availability and Access to Lands*

OWNER shall, as indicated in the Contract Documents, secure and pay for easements and right of ways to the lands and/or to the Project site where the Work is to be performed. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities, if any, shall be secured by and paid for by OWNER. CONTRACTOR is responsible for providing any additional lands and access to such lands required by CONTRACTOR for temporary storage of equipment and materials, temporary construction facilities, staging of equipment or materials or parking of vehicles.

### 4.2 *Physical and Subsurface Conditions*

4.2.1 **Reports, drawings, data and assessments:** Reference is made to Section 00300 Information Available to Offerors for identification of:

4.2.1.1 **Subsurface Conditions:** Those reports, drawings, data and/or assessments of tests and/or exploration of subsurface conditions at or contiguous to the Project site that were utilized in preparing the Bidding Documents.

4.2.1.2 **Physical Conditions:** Those drawings, descriptions, photographs, reports, assessments and/or mapping of physical conditions, other than Subsurface Facility, relating to existing surface and/or subsurface structures at or contiguous to the Project site that were utilized in preparing Bid Documents.

4.2.2 **Differing Subsurface or Physical Conditions:** If CONTRACTOR believes any subsurface or physical condition uncovered, revealed or otherwise exposed at the Project site is:

4.2.2.1 of such a character and/or nature as to require a change in the Contract Documents;

4.2.2.2 materially different from that shown, indicated or described in the Bidding Documents;

4.2.2.3 of an unusual nature materially different from conditions normally encountered and generally recognized as inherent in Work of the character provided for in the Bidding Documents, then;

4.2.2.4 CONTRACTOR shall, upon discovery, and before further disturbance of conditions or performing Work in connection with, provide notice to OR and ARCHITECT setting forth a description of such conditions. CONTRACTOR shall not further disturb such conditions until directed to do so by OR or ARCHITECT and;

- 4.2.2.5 OR and ARCHITECT shall review the described conditions and shall determine the necessity to secure additional explorations and/or tests and shall provide notice to CONTRACTOR of the findings and conclusions.
- 4.2.3 **Possible Change in Contract Documents:** If OR and ARCHITECT determine a change in the Contract Documents is warranted as a result of a differing subsurface or physical condition as noted in Articles 4.2.2.1 through 4.2.2.3 a Construction Directive may be issued to reflect and document the change.
- 4.2.4 **Contract Amount, Milestones and Contract Time Adjustments:** Adjustment of the Contract Amount, Milestones and/or Contract Time will be allowed to the extent the existence of such revealed conditions directly causes an increase in CONTRACTOR cost and/or time of performance of the Work subject to the following:
- 4.2.4.1 the condition must meet one or more of the limitations as set forth in Articles 4.2.2.1 through 4.2.2.3, inclusive;
- 4.2.4.2 a change in the Contract Documents as set forth in Article 4.2.3 shall not serve as an entitlement to any adjustments to the Contract Amount, Milestones and/or Contract Time;
- 4.2.4.3 in respect to Work which is paid on a Unit Price basis, any adjustment to the Contract Amount shall be as set forth in Articles 9.10 and 11 .11 through 11.12;
- 4.2.4.4 CONTRACTOR shall not be entitled to an adjustment in the Contract Amount, Milestones and/or Contract time if:
- 4.2.4.4.1 CONTRACTOR was aware of the condition at the time of bid;
- 4.2.4.4.2 the existence or discovery of the condition would have been apparent as a result of any examination, investigation, exploration, test and/or examination of the Project site and areas adjoining the Project site as required by the Bidding Documents prior to CONTRACTOR submission of bid;
- 4.2.4.4.3 CONTRACTOR failed to provide notice in accordance with Article 4.2.2.4. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

4.3 ***Physical Conditions - Subsurface Facility***

4.3.1 **Shown or Indicated in Bidding Documents:** The information shown or indicated in the Bidding Documents in respect to existing Subsurface Facility at or adjacent to the Project site is based on information provided to OWNER, OWNER Consultant, ARCHITECT or ARCHITECT Consultant by the owners of such facility or by others. Unless it is specifically expressed otherwise in the Contract Documents:

4.3.1.1 OWNER, OR, OWNER Consultant, ARCHITECT and ARCHITECT Consultant shall not be responsible for the accuracy and completeness of any information or data by others and not shown or included in the Contract Documents;

4.3.1.2 the costs to perform all of the following shall be included in the Contract Amount and CONTRACTOR shall be responsible for: reviewing, checking and verifying all such information and data; locating all Subsurface Facility shown, indicated and/or described in the Bidding Documents; coordination and construction of the Work in conjunction with the owners of all such Subsurface Facility; the continuous operation of all existing Subsurface Facility; the furnishing and maintenance of all temporary in kind and place Subsurface Facility; the safety and protection of all such Subsurface Facility as provided for in Article 6.44.4 and the repair and/or replacement of any damaged Subsurface Facility resulting from the Work.

4.3.2 **Not Indicated or Shown:** If CONTRACTOR reveals and/or uncovers any Subsurface Facility not shown or indicated in the Bidding Documents, CONTRACTOR shall, upon discovery and before further disturbance of such Subsurface Facility, identify the owner of such Subsurface Facility and provide notice to the owner of such Subsurface Facility, OR and ARCHITECT. OR and ARCHITECT shall review the Subsurface Facility and determine the extent of any change to the Contract Documents. If ARCHITECT determines a change in the Contract Documents is required a Construction Directive may be issued and CONTRACTOR shall be responsible for the safety and protection of such Subsurface Facility as set forth in Article 6.44.4. CONTRACTOR shall only be entitled to an adjustment in the Contract Amount, Milestones and/or Contract Time to the extent they are directly related to the existence of any Subsurface Facility which was not shown and/or indicated in the Bidding Documents. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

#### 4.4 ***Reference Points and Elevations***

When required by the scope of the Work, OWNER will furnish at its expense, an engineering survey of the Project site, giving as applicable, benchmark elevation points, property lines and corners. CONTRACTOR shall layout the Work and shall be responsible for the preservation of all established benchmark elevation points, property lines and corners and shall not demolish, relocate and/or change the location of any benchmark elevation point, property line or corner without the prior written approval of OR. CONTRACTOR shall, upon the loss, destruction and/or relocation of any benchmark elevation points, property line or corner promptly notify ARCHITECT and OR prior to such replacement and/or relocation of benchmark elevation point, property line or corner. CONTRACTOR shall, at expense of CONTRACTOR, engage the services of State of Georgia licensed surveyor to replace and/or relocate benchmark elevation points, property line or corners lost, destroyed and/or relocated.

#### 4.5 ***Asbestos, PCB's & Mercury Waste, Lead Based Paint and/or Petroleum***

4.5.1 OWNER shall be responsible for any asbestos, polychlorinated biphenyl's (PCB's), mercury waste, lead based paint and petroleum discovered, uncovered and/or otherwise revealed at the Project site which were not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work. OWNER is not responsible for any such materials brought to the Project site by CONTRACTOR, Subcontractor, material supplier or anyone else CONTRACTOR is directly or indirectly responsible for. The provisions as set forth in Articles 4.2 and 4.3 are not intended to apply to asbestos, PCB's and mercury waste, lead based paint and petroleum uncovered, revealed and/or otherwise exposed at the Project site.

4.5.2 **Asbestos:** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be asbestos, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. CONTRACTOR shall also immediately provide notice to Fulton County Schools Environmental Services Division of Facilities Services Department. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as an asbestos material requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the asbestos material has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition,

circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall proceed as required by Article 12.6.

4.5.2.1 CONTRACTOR shall be listed on or shall utilize OWNER approved asbestos abatement Subcontractors.

4.5.3 **PCB'S & Mercury Waste:** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be PCB's or mercury waste, which were not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as PCB's or mercury waste requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the PCB's or mercury waste has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall proceed as required by Article 12.6.

4.5.4 **Lead Based Paint:** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be lead based paint, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as lead based paint requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles

10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the lead based paint has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall proceed as required by Article 12.6.

- 4.5.5 **Petroleum:** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be petroleum, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as petroleum requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the lead based paint has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall proceed as required by Article 12.6.

4.6 ***Hazardous Material, Hazardous Substance, Hazardous Waste and/or Radioactive Materials***

- 4.6.1 OWNER shall be responsible for any hazardous material, hazardous substance, hazardous waste or radioactive materials discovered, uncovered and/or otherwise revealed at the Project site which were not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work. OWNER is not responsible for any such materials brought to the Project site by CONTRACTOR, Subcontractor, material supplier or anyone else CONTRACTOR is directly or indirectly responsible for. The provisions as set forth in Articles 4.2 and 4.3 are not intended to apply to hazardous material, hazardous substance, hazardous waste and/or radioactive material uncovered, revealed and/or otherwise exposed at the Project site.

- 4.6.2 ***Hazardous Material:*** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be a hazardous material, which is not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as a hazardous material requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the hazardous material has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, the CONTRACTOR shall proceed as required by Article 12.6.
- 4.6.3 ***Hazardous Substance:*** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be a hazardous substance, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as a hazardous substance requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the hazardous substance has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, the CONTRACTOR shall proceed as required by Article 12.6.

- 4.6.4 ***Hazardous Waste:*** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be a hazardous waste, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as a hazardous waste requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the hazardous substance has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, the CONTRACTOR shall proceed as required by Article 12.6.
- 4.6.5 ***Radioactive Materials:*** If, during construction of the Work in areas where CONTRACTOR is required to perform Work, CONTRACTOR discovers, uncovers and/or otherwise reveals a material reasonably believed to be a radioactive material, which was not identified, described, shown or indicated in the Bidding Documents to be within the scope of the Work, CONTRACTOR shall immediately stop Work in the affected area and provide notice, as set forth in Article 12.4, to OR and ARCHITECT, advising of the circumstances of such discovery, Work stoppage and whether or not such material was generated by CONTRACTOR or OWNER. OWNER shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. If test results indicate and/or otherwise confirm the material as a radioactive material requiring treatment and/or removal, OR may issue a Construction Directive for the legal treatment and/or removal and disposal thereof. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive. After treatment and/or removal, the independent testing laboratory shall test and certify the radioactive material has been removed and/or controlled to within legal limits and requirements. Upon receipt of such test results, OR will provide notice, as set forth in Article 12.5, to CONTRACTOR to proceed with construction in affected Work areas. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, the CONTRACTOR shall proceed as required by Article 12.6.

4.7 ***Materials Not Caused by CONTRACTOR***

In the event the presence of the materials as set forth in Articles 4.5 and 4.6 is not caused by CONTRACTOR or some person or entity directly or indirectly performing under CONTRACTOR or its Subcontractors, OWNER shall pay for all costs of testing and remediation, if any.

4.8 ***Indemnification by CONTRACTOR for Material Caused by CONTRACTOR***

In the event the presence of the materials as set forth in Articles 4.5 and 4.6 are caused by CONTRACTOR, Subcontractors, Suppliers, or anyone else who would otherwise be a "claimant," CONTRACTOR shall pay for all costs of testing and remediation, if any, and shall indemnify and hold OWNER harmless from and against such costs . In addition, CONTRACTOR shall defend, indemnify and hold harmless OWNER, OR, OWNER Consultant, ARCHITECT, ARCHITECT Consultant, Insurance Carriers and/or their respective agents, officers, representatives, consultants, and employees from and against any and all claims, actions, damages, losses, costs, penalties and expenses incurred in connection with, arising out of, or relating to, the presence of such materials. The OWNER shall have the right to assess any and all costs against Contract funds, the CONTRACTOR, and/or the performance bond.

4.9 ***Survival of Provisions***

The terms of these material provisions as set forth in Articles 4.7 and 4.8 shall survive Final Completion and/or any termination of this Contract.

END OF ARTICLE

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## ARTICLE 5 - INSURANCE AND BONDS

### 5.1 *General*

5.1.1 ***Basic Insurance Requirements:*** Prior to commencing Work and until final acceptance, CONTRACTOR and each of its Subcontractors shall procure and maintain insurance at their own cost and expense against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the CONTRACTOR, its agents, representatives, employees or Subcontractors.

5.1.1.1 Without in any way affecting the indemnity provided in or by the CONTRACTOR shall secure before commencement of the Work the types and amounts of insurance specified in this section.

5.1.1.2 Insurance is to be placed with insurers admitted to do business in the State of Georgia and approved by OWNER with an AM Best Rating of A VIII.

5.1.1.3 Each insurance coverage required by the Minimum Limits of Insurance shall be endorsed to state that coverage shall not be canceled or modified except after thirty (30) days prior written notice by certified mail, return receipt requested, has been received by Owner in accordance with the notice provisions of this Agreement.

5.1.2 ***Minimum Limits of Insurance:*** CONTRACTOR and each of its Subcontractors shall obtain insurance of the types and in the amounts described below:

5.1.2.1 Commercial General Liability Insurance including Premises Liability with Elevator Liability, Completed Operations and Products Liability in effect for two (2) years after final payment, Personal Injury Liability, Property Damage Liability and Contractual Liability. Coverage shall be written on an occurrence basis in the amount of a combined single of \$1,000,000.

5.1.2.2 Business Automobile Liability Insurance including personal injury and property damage to cover owned automobiles, automobiles under long-term lease, hired automobiles, employers' non-ownership liability, medical payments and uninsured motorists in the amount of a combined single limit of \$1,000,000.

5.1.2.3 Workers' Compensation Insurance and Employees Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.

5.1.2.3.1 On all Projects where the Contract Amount is greater than \$1,000,000, OWNER shall procure Builder's Risk Insurance including coverage for the Work, on a replacement cost basis, providing the perils included on a

Special Form property policy, including, but not limited to, the perils of fire, lightning, explosion, windstorm, flood and earthquake (including sinkholes and subsidence), strike, riot, civil commotion, vandalism and malicious mischief, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Work and property of Others.

In connection with any claims made under the Builder's Risk Insurance provided under this Subparagraph, CONTRACTOR shall reimburse OWNER for the first \$10,000.00 (in the aggregate) paid by OWNER as a deductible under the policy. Should CONTRACTOR fail to reimburse OWNER for any such amounts within thirty (30) days of OWNER's request, OWNER may withhold such amounts from any payments owed to CONTRACTOR.

- 5.1.2.3.2 On all Projects where the Contract Amount is less than \$1,000,000.00, CONTRACTOR shall provide Builder's Risk Insurance including coverage for the Work, on a replacement cost basis, providing the perils included on a Special Form property policy, including, but not limited to, the perils of fire, lightning, explosion, windstorm, flood and earthquake (including sinkholes and subsidence), strike, riot, civil commotion, vandalism and malicious mischief, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of the Work and property of Others for which CONTRACTOR has responsibility to insure. Coverage shall be written on an occurrence basis in the amount of contract award, with a deductible of not more than \$25,000.00

5.1.3 ***Other Insurance Provisions:*** All policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

- 5.1.3.1 OWNER, Board of Education, and any other person or entity specified by OWNER.
- 5.1.3.2. For any claims related to this Project, insurance coverage provided by the CONTRACTOR shall be primary as to OWNER, Board of Education, and any other person or entity specified by OWNER to be named as additional insured. Any insurance or self-insurance maintained by OWNER, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

5.2 ***Waiver of Subrogation***

CONTRACTOR hereby waives all rights of recovery under subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OR, OWNER, the Board, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OWNER in connection with the planning, development and construction of the Work. CONTRACTOR shall also require that all CONTRACTOR maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against CONTRACTOR. CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity:

5.2.1 would otherwise have a duty of indemnification, contractual or otherwise;

5.2.2 did not pay the insurance premium directly or indirectly;

5.2.3 whether or not such individual or entity has an insurable interest in the property damaged.

5.3 ***Lapse in Coverage***

If CONTRACTOR or any Subcontractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Contract, the same shall be deemed a material breach of Contract. OWNER, at its sole option, may terminate this Contract and recover all damages from CONTRACTOR resulting from said breach. Alternatively, OWNER may purchase such coverage (but has no obligation to do so), without further notice to CONTRACTOR, and deduct from sums due to CONTRACTOR any premium costs advanced by OWNER for such insurance.

5.4 ***Verification of Insurance***

CONTRACTOR shall furnish OWNER with original certificates and amendatory endorsements effecting and evidencing coverage required by this Section. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on forms acceptable to OWNER. All certificates and endorsements are to be received and approved by OWNER before Work by CONTRACTOR under this Contract commences. OWNER reserves the right to require complete, certified copies of all required insurance policies at any time, including endorsements (and policies, if requested) affecting the coverage required by these specifications.

5.5 ***Duration of Coverage***

The insurance coverages required by Article 5 shall be maintained without interruption, for a period of two (2) years after Final Completion of the Project, unless otherwise stated herein.

5.6 ***Reserved Rights***

OWNER reserves the right to adjust monetary limits of insurance coverage at any time if deemed necessary in its reasonable judgment and shall be responsible for the direct cost of any increase in premiums as a result.

5.7 ***Subcontractors***

Unless otherwise approved by OWNER in writing, CONTRACTOR shall include all Subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each Subcontractor. In addition, Subcontractors shall be required to maintain insurance on the same terms and with the same coverages as required of CONTRACTOR under this Contract.

5.8 ***Audits***

In addition to OWNER rights under Article 6.55, CONTRACTOR agrees OWNER may audit CONTRACTOR or any of its Subcontractors payroll records, books and records, insurance coverage's, insurance cost information, or any other information CONTRACTOR provides to OWNER to confirm their accuracy.

5.9 ***Safety***

CONTRACTOR shall be solely responsible for safety of the Work of this Contract. CONTRACTOR shall establish a safety program that, at a minimum, complies with all local, state and federal safety standards, and any safety standards established by OWNER for the Project, including, but not limited to, the OSHA Construction Safety Standards.

5.10 ***Bond Requirements***

CONTRACTOR shall apply for and furnish to OWNER separate payment and performance bonds for the Work. The performance bond shall be in a monetary amount equal to 100% of the original Contract Amount guaranteeing the prompt, competent and faithful performance of all terms and conditions of the Contract. The payment bond shall be for 100% of the Contract Amount and guarantee, without limitation, the payment in full of all claims for labor, services, materials, supplies, and the like, for the Work. A corporate surety authorized and admitted to transact business in Georgia shall provide the bonds. CONTRACTOR shall supply OWNER with documentation establishing the necessary requirements of the surety consistent with Georgia law. To the extent, if any, the Contract Amount is increased in accordance with the Contract Documents, CONTRACTOR shall, upon request of OWNER, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to OWNER. The bonds shall further provide no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Amount, as referred to above), adjustment to the Milestones and/or Contract Time, or modifications of the time, terms, or conditions of payment to the CONTRACTOR will release the sureties. If CONTRACTOR fails to furnish the required bonds, or fails to keep such bonds in full force and effect up through such times that such bonds are otherwise obligated to be in force and effect under the law, OWNER may terminate CONTRACTOR right to proceed with the Work and/or terminate the Contract for cause. The performance bond shall be in the form and contain the content shown in Document 00605. The payment bond shall be in the form and contain the content shown in Document 00600. Nothing set forth herein shall relieve the CONTRACTOR from compliance with all requirements prescribed by Georgia law, including but not limited to the legal obligations set forth in Georgia Local Government Public Works Construction Law, O.C.G.A. section 36-91-1, et. seq.

5.11 ***Surety Qualification***

Only bonds executed by admitted surety insurers shall be accepted. Surety must be a Georgia-admitted surety, listed by the U.S. Treasury with a bonding capacity in excess of the Contract Amount and a Best's bond rating of not less than A VIII.

5.12 ***Subcontractor Payment and Performance Bonds***

For each Subcontractor having a Subcontract of \$100,000.00 or more for roofing, HVAC, plumbing, sprinkler system and electrical work, the Subcontractor shall procure payment and performance bonds for one hundred percent (100%) of the Subcontract amount. The Subcontractor's bonds shall be written by a surety having the qualifications set forth Section 5.11. The Subcontractor's bonds shall be presented to Owner prior to the Contractor billing for or receiving payment for amounts under the applicable Subcontracts.

END OF ARTICLE

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## **ARTICLE 6 - CONTRACTOR DUTIES AND REPONSIBILITIES**

### *Management and Superintendence of the Work*

- 6.1 CONTRACTOR shall supervise and direct all aspects of the Work using the best skill, attention, and efforts of CONTRACTOR. CONTRACTOR shall be solely responsible for and exercise full control over construction means, methods, techniques, sequences, safety procedures, and coordinating all portions of the Work, unless the Contract Documents provides other specific instructions concerning these matters.
- 6.2 CONTRACTOR shall provide a competent full time English speaking superintendent and assistants as necessary that shall supervise and superintend the Work and be physically present at the Project site while any aspect of the Work is being performed.
- 6.3 CONTRACTOR shall provide a competent English speaking project manager and assistants as necessary that shall administer and manage the Work. The project manager shall represent CONTRACTOR, and communications given to the project manager shall be as binding as if given to CONTRACTOR. In the event the Contract Amount is equal to or exceeds ten million dollars (\$10,000,000) the project manager shall be assigned to the Work on a full time basis and shall be present at the Project site while any aspect of the Work is being performed.
- 6.4 CONTRACTOR shall furnish and ensure competent adequate staff necessary to properly administer, coordinate, purchase, expedite, and/or organize the procurement of all materials and equipment so the materials and equipment will be procured and delivered at the time they are required to be incorporated into the Work and to furnish and maintain an adequate force of skilled workers on the Project site to complete the Work in accordance with the Contract Documents.
- 6.5 CONTRACTOR shall enforce strict discipline and good order among employees and other persons carrying out the Work including, but not limited to, Subcontractors, and/or material and/or equipment suppliers retained for the Work. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. CONTRACTOR shall ensure all employees and other persons carrying out the Work abide by all regulations pertaining to, but not limited to, smoking, consumption of alcohol, illegal substances, profanity or inappropriate attire and prohibited verbal and physical contact with students and faculty.
- 6.6 CONTRACTOR shall be responsible to OWNER for acts and omissions of CONTRACTOR employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with CONTRACTOR or any of its Subcontractors.

### *Labor, Materials and Equipment of the Work*

- 6.7 Unless otherwise specified in the Contract Documents, CONTRACTOR shall provide and furnish qualified personnel to proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, including without limitation, all labor, material, equipment, apparatus, tools, construction equipment and machinery, appliances, fuel, power, light, heat, ventilation, telephone, sanitary facilities, water, gas, utilities, transportation, and all other incidental facilities and services for the furnishing, performance, testing, start up, and completion of the Work.

- 6.8 Unless otherwise specified in the Contract Documents, all materials and equipment to be permanently installed in the Work shall be new and shall be of such quality as required by the Contract Documents. All warranties and guarantees required by the Contract Documents shall be expressly issued to the benefit of OWNER. CONTRACTOR shall, if requested by ARCHITECT, furnish satisfactory evidence in the form of reports of required tests as to kind and quality of all materials and equipment. All equipment, appliances, and fixtures shall be installed, erected, connected, tested, started and conditioned in accordance with applicable manufacturer's instructions and the Contract Documents.
- 6.8.1 The furnishing, use or installation of Lead Containing Paint or Asbestos Containing Construction Materials into the Work, Project or onto OWNER property is not permitted.
- 6.9 CONTRACTOR shall, upon approval of applicable submittals, promptly place orders for materials and equipment so delivery of materials and equipment can be incorporated into the Work without delay. CONTRACTOR, upon receipt of notice from OR shall furnish documentary evidence from CONTRACTOR, Subcontractor, distributor and/or manufacturer verifying placement of orders and/or scheduled delivery dates.

***Delivery and Storage of Products, Equipment, Fabrications and Materials***

- 6.10 Products, equipment, fabrications and applicable materials shall be delivered with an identification tag or label specifying name of manufacturer, model number, type and other pertinent data described on such tag or label as required for complete identification. If products, equipment, fabrications and applicable materials are not so identified then CONTRACTOR shall provide an invoice and/or other supporting identification of products, equipment, fabrications or applicable materials. CONTRACTOR shall be responsible for the safety and proper storage of all products, equipment, fabrications and applicable materials delivered to the Project site.
- 6.11 Materials specified to be tested, which are delivered to and are to be tested on the Project site, shall be stored in separate areas in order to segregate untested materials or materials undergoing testing from materials previously tested and approved. CONTRACTOR shall have on the Project site at all times a sufficient quantity of tested and approved materials for timely integration into and completion of the Work in accordance with the approved Detailed Construction Schedule.

6.12 ***Construction Schedule***

Given time is of the essence, CONTRACTOR shall expeditiously proceed in accordance with the Detailed Construction Schedule established pursuant to Article 2.8, related Division 01 Sections, and as amended from time to time, and shall furnish and maintain adequate forces in order to achieve all Milestones as set forth in the Detailed Construction Schedule. If requested by the ARCHITECT and/or OR, CONTRACTOR shall submit, in accordance with applicable Division 01 Requirements, proposed adjustments to the Detailed Construction Schedule, which does not change or amend either the Milestones and/or Contract Time. Proposed adjustments to the Detailed Construction Schedule which change and/or amend the Contract Amount, Milestones and/or Contract Time shall be submitted by CONTRACTOR in accordance with the applicable requirements of Articles 10 through 12.

6.13 ***Sufficient Forces***

CONTRACTOR shall furnish and maintain sufficient forces to ensure completion of all Work in accordance with each and every approved Detailed Construction Schedule.

6.14 ***“Or Equal” and Substitutions***

When an item of material or equipment is specified by the use of a proprietary name, make, trade name, or catalog number the intent of the Specification is to establish the type, function and quality required. Unless the Specification or description contains or is followed by words reading that no like or no substitution is permitted, other items of material or equipment or material or equipment of other suppliers may be accepted by OR in accordance with the following sections.

***Ten days after the date established in the Notice to Proceed***

6.14.1 CONTRACTOR may submit a list to the OR of proposed substitutions and substantiating data setting forth any “or equal” item of material or equipment CONTRACTOR believes to be functionally equal to and sufficiently similar to those specified in the Contract Documents. Any substitutions submitted by CONTRACTOR under this subsection shall be done in a timely manner so as not to materially impact the Construction Schedule or delay the Work.

6.14.2 The substantiating data shall include a CONTRACTOR certification stating that the proposed “or equal“ will be readily available, perform the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. All variations of the proposed “or equal” from that specified shall be identified in the proposal and all available maintenance, repair and replacement services shall be submitted. In addition, the following items shall be addressed in the substantiating data as to whether or not:

6.14.2.1 acceptance of the “or equal” for use in the Work will require a change in any of the Contract Documents or in the provisions of any other Separate Work Contract on the Project or to adapt the design to the proposed “or equal;”

6.14.2.2 the proposed ”or equal” is subject to payment of any license fee or royalty;

6.14.2.3 the proposed “or equal“ is equal to in quality and serviceability to the specified item;

6.14.2.4 is acceptable in consideration of the required design and artistic effect;

6.14.2.5 will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts.

6.14.3 ***CONTRACTOR Expense:*** All data to be provided by CONTRACTOR in support of any proposed “or equal“ will be at expense of CONTRACTOR.

- 6.14.4 ***Evaluation:*** ARCHITECT and OR shall be allowed a reasonable time to evaluate each submittal made pursuant to Articles 6.14.1 and 6.14.2 with OR as the final judge of acceptability. No proposed “or-equal” will be ordered, installed or utilized without OR prior written acceptance as evidenced by a Construction Directive and/or Change Order. ARCHITECT may condition its approval of the “or equal” upon delivery to OWNER of an extended warranty or other assurances of adequate performance of the “or equal.” All risks of damage, of any kind, including, without limitation, all costs associated with any delay, disruption and/or acceleration due to obtaining approval from the Division of the State Architect, or any other governmental agency having jurisdiction of an approved “or equal” shall be the responsibility of CONTRACTOR.

***Eleven Days after the date Established in the Notice to Proceed***

- 6.14.5 A specified item of material or equipment, which is no longer manufactured and/or cannot be acquired from existing inventories, will be considered a basis for a proposed substitute item. Proposed substitutions of materials or equipment other than those specified must be made on the substitution request form available from OWNER in a timely manner so as not to materially impact the Construction Schedule or delay completion of the Work. Substitution requests will not be submitted to ARCHITECT by anyone else other than CONTRACTOR. A substitution request form shall certify the proposed substitution will be readily available, perform adequately the functions and achieve the results called for by the design concept, be similar in substance to that specified, and be suited to the same use as that specified. All variations of the proposed substitute from that specified will be identified in the substitution request and available maintenance, repair and replacement service will be indicated. The substitution request will also contain an itemized estimate of all costs or credits directly or indirectly resulting from acceptance of such substitute, including costs of redesign and of Subcontractors affected by the resulting change, all of which shall be considered by ARCHITECT in evaluating the proposed substitute. In addition, the following items shall be considered:
- 6.14.5.1 the extent, if any, to which the time required to evaluate and consider accepting a proposed substitution will jeopardize timely compliance with any Milestones;
  - 6.14.5.2 whether or not acceptance of the proposed substitution for use in the Work will require a change in any of the Contract Documents or in the provisions of any other Work by Separate Work Contract on the Project to adapt the design to the proposed substitute;
  - 6.14.5.3 whether or not the proposed substitute is subject to payment of any license fee or royalty;
  - 6.14.5.4 the proposed substitution is equal in quality and serviceability to the specified item;
  - 6.14.5.5 is acceptable in consideration of the required design and artistic effect;
  - 6.14.5.6 will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts.

6.14.6 **CONTRACTOR Expense:** All data to be provided by CONTRACTOR in support of any proposed substitute item will be at expense of CONTRACTOR.

6.14.7 **Evaluation:** ARCHITECT and OR shall be allowed a reasonable time within which to evaluate each proposal for or submittal made pursuant to Article 6.14.5. ARCHITECT shall make a written recommendation to OR regarding the acceptability of the proposed substitution. No substitution will be ordered, installed or utilized without OR prior written acceptance as evidenced by a Construction Directive and/or Change Order. ARCHITECT may condition its approval of the substitution upon delivery to OWNER of an extended warranty or other assurances of adequate performance of the substitution. All risks of damage, of any kind, including, without limitation, all costs associated with any delay, disruption and/or acceleration due to obtaining approval from the Division of the State Architect, or any other governmental agency having jurisdiction, of a requested substitution shall be the responsibility of CONTRACTOR. ARCHITECT shall record the time of ARCHITECT and ARCHITECT Consultants in evaluating substitutions proposed or submitted by CONTRACTOR pursuant to Article 6.14.5, seeking any approvals required by governing agencies, and in making any changes in the Contract Documents or in the provisions of any other Separate Work Contract on the Project. Whether or not OR accepts a substitution so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for ARCHITECT and ARCHITECT Consultant fees in evaluating each such proposed substitution. The OWNER shall have the right to assess any and all costs against Contract funds, the CONTRACTOR, and/or the performance bond.

#### 6.15 **Additional Professional Services**

If OR, prior to recordation of the Notice of Completion, is required to provide or secure additional professional services for any reason by any acts of CONTRACTOR or its Subcontractors, CONTRACTOR may be responsible for the cost and expense thereof. Upon notice to CONTRACTOR, OWNER shall retain and provide additional professional services and may, by assessment, recover all incurred costs for any additional professional services. Additional services shall include:

6.15.1 all services made necessary by termination of CONTRACTOR for cause;

6.15.2 all services made necessary due to defective Work of CONTRACTOR;

6.15.3 all services required by failure of CONTRACTOR to perform Work according to any provision of the Contract Documents;

6.15.4 all services in connection with evaluating CONTRACTOR substitutions of materials or equipment and making subsequent revisions to drawings, specifications, and providing other documentation required;

6.15.5 all services required by failure of CONTRACTOR to prosecute the Work in compliance with the Detailed Construction Schedule;

6.15.6 all services required by failure of CONTRACTOR to pass or receive approval of any required test, inspection, observation or approval;

- 6.15.7 all services required in performing excessive reviews of CONTRACTOR punch list Work;
- 6.15.8 all services in performing excessive reviews of CONTRACTOR Shop Drawings, material lists, Product Data, and Samples;
- 6.15.9 all services made necessary by OWNER exercising its options under Articles 15.5.15 and/or 15.5.16.

***Relative to Subcontractors, Suppliers and others***

- 6.16 CONTRACTOR whose bid is accepted shall provide written notification to OWNER of any proposed substitute of person or entity as a Subcontractor in place of the Subcontractor designated in the original bid. OWNER shall have five (5) business days from receipt of written notice of substitution to object to any substitution stating the grounds for such objection. If OWNER fails to object to substitution within the time period, the substitution shall be deemed accepted and approved to by the OWNER. However, CONTRACTOR shall not make any assignment or substitution where OWNER objects within the time period. All substitutions shall be void, and the assignees shall acquire no rights in the purported subcontract and/or Contract where CONTRACTOR fails to notify OWNER or OWNER objects to the assignment or substitution. Any consent, if given, shall not relieve CONTRACTOR or its Subcontractors from their obligations under the terms of the Contract Documents.
- 6.17 CONTRACTOR shall be responsible for all unreasonable and unforeseeable delays in the Milestones and/or Contract Time arising from substitutions approved by the OWNER. Any substitution shall not result in an adjustment to the Contract Amount.
- 6.18 CONTRACTOR shall be responsible to OWNER for all acts and omissions of Subcontractors, suppliers and all others in furnishing and/or performance of the Work either by direct or indirect contract to CONTRACTOR. No provisions of the Contract Document shall serve to create and/or establish any contractual relationship between OWNER and/or ARCHITECT with any Subcontractor, supplier, or others in the furnishing and performance of the Work.
- 6.19 CONTRACTOR shall be responsible for the scheduling and coordination of all Work of Subcontractors, suppliers and all others in furnishing and/or performance of the Work by direct and/or indirect contract to CONTRACTOR. CONTRACTOR shall require all Subcontractors, suppliers and all others furnishing and/or performing any of the Work to communicate with ARCHITECT, OR or OWNER through CONTRACTOR.
- 6.20 CONTRACTOR shall not be limited by the divisions of the Specifications or the identification of Drawings in apportioning the Work amongst Subcontractors or suppliers unless otherwise required by applicable law, regulation or statute.
- 6.21 By appropriate subcontract agreement CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to CONTRACTOR by terms of the Contract Documents, and to assume toward CONTRACTOR all obligations and responsibilities, which CONTRACTOR, by the Contract Documents, assumes toward OWNER. Each subcontract agreement shall preserve and protect the rights of OWNER under the Contract Documents with respect to the Work to be performed by the Subcontractor so the subcontracting thereof will not prejudice such rights. All subcontracts regarding the Work under the Contract shall contain an assignment clause running in favor of OWNER and/or an

entity designated by OWNER. That clause is subject to the option of OWNER to exercise it. CONTRACTOR shall also require each Subcontractor to enter into similar subcontracts with sub-Subcontractors. CONTRACTOR shall make available to each proposed Subcontractor, before the execution of the subcontract agreement, the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make the Contract Documents available to their respective sub-Subcontractors.

- 6.22 Each subcontract agreement for a portion of the Work is assigned by CONTRACTOR to OWNER provided that: (1) the assignment is effective only after termination of the Contract or after CONTRACTOR right to proceed with the Work has been terminated under Article 15.5.16; (2) and only for those subcontract agreements which OWNER accepts by specifically notifying the Subcontractor in writing; (3) and the assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.
- 6.23 CONTRACTOR shall ensure by subcontract agreement each Subcontractor has the responsibility for participating in, and enforcing, the safety and loss prevention programs established by CONTRACTOR for the Work and/or Project, which will cover all Work performed by CONTRACTOR and its Subcontractors. Each Subcontractor shall designate a competent person whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. All Subcontractors and material or equipment suppliers shall cooperate fully with CONTRACTOR, OR, the OWNER, and all insurance carriers and loss prevention engineers.
- 6.24 CONTRACTOR shall ensure by subcontract agreement each Subcontractor shall promptly report in writing to CONTRACTOR all incidents and/or accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Project site, and whether or not they caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. CONTRACTOR shall thereafter promptly report the facts in writing to OR and ARCHITECT giving full details of the accident.
- 6.25 CONTRACTOR shall ensure by subcontract agreement each Subcontractor shall prepare and submit to CONTRACTOR within ten (10) days of execution of each subcontract agreement, comprehensive material lists, as set forth in Article 6.48.3, of the manufacturers and products proposed for the Work including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for CONTRACTOR or ARCHITECT preliminary approval. Approval of such material lists of products shall not be construed as a substitute for the Shop Drawings, Product Data, manufacturers descriptive data, Samples, or a substitution request, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of CONTRACTOR and ARCHITECT.
- 6.26 No later than ten (10) days after receipt of payment, CONTRACTOR shall pay to each Subcontractor, out of the amount paid to CONTRACTOR on account of such Subcontractors portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to CONTRACTOR on account of such Subcontractors portion of the Work. CONTRACTOR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-Subcontractors in a similar manner.

- 6.27 OWNER shall, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by CONTRACTOR, and action taken thereon by OWNER, on account of portions of the Work completed by such Subcontractor.
- 6.28 OWNER shall have no obligation to pay, or to see to the payment of monies to a Subcontractor except as may otherwise be required by law.
- 6.29 Payment to material or equipment suppliers shall be treated in a manner similar to that provided for in Articles 6.26, 6.27 and 6.28.
- 6.30 CONTRACTOR shall not use in any way as part of its bid, and shall not use to perform any portion of the Work, a Subcontractor, contractor or subcontractor who is ineligible to bid and/or work on a work of public improvements.
- 6.31 *Patent Fees and Royalties*

CONTRACTOR shall be financially responsible for payment of all royalties and license fees and shall assume all incidental costs in the performance of and/or incorporation into the Work of any invention, process, design, product or device subject to the patent and/or copyrights held by others. CONTRACTOR shall defend all suits or claims of infringement of patent and/or copyrights rights and shall hold OWNER, ARCHITECT and ARCHITECT Consultant harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the terms and conditions of the Contract Documents. If CONTRACTOR has reason to believe the required invention, process, design, product or device is an infringement of a patent and/or copyright, CONTRACTOR shall be responsible for such loss unless such information is furnished to ARCHITECT prior to the use and/or incorporation into the Work. ARCHITECT review of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for CONTRACTOR use in violation of any patent or other rights of any person or entity. CONTRACTOR shall defend all suits or claims of infringement of patent and/or copyrights and shall hold OWNER, ARCHITECT and ARCHITECT Consultant harmless from loss when the terms and conditions of Contract Documents do not require particular invention, process, design, or product.

6.32 *Permits and Fees*

CONTRACTOR shall obtain all permits and be financially responsible for all governmental fees, licenses and inspections necessary for proper execution and completion of the Work that are customarily secured after the Effective Date of the Contract and are required by any authority having legal jurisdiction over the Work and/or Project. In cases where a local government does not issue permit for the Project and requires independent permitting and inspections, OWNER shall be responsible for all independent project reviews, inspections, especially Certificate of Occupancy Inspections and all on site Project testing and inspection within the distance limitations set forth in Article 13.15.5, unless a different distance limitation is specified in the Contract Documents.

***Laws and Regulations***

- 6.33 CONTRACTOR shall comply with all laws and regulations and shall give all notices required by any law, ordinance, rule, regulation, and lawful order of public authorities having jurisdiction relative to the furnishing of or performance of the Work.

6.34 If CONTRACTOR performs Work contrary to any law, statute, ordinance, building code, rule or regulation, CONTRACTOR shall be responsible for all the direct and indirect costs, fees, expenses, losses and damages in connection with replacement thereof.

6.35 [Intentionally left blank]

6.36 If the Work involves any excavation of any trench or trenches five (5) feet or more in depth, CONTRACTOR shall, in advance of excavation, submit to OR or a registered civil or structural engineer employed by OWNER, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. No excavation of such trench or trenches shall be commenced until said plan has been reviewed by the person to whom authority to review has been delegated to by OWNER. Nothing in this Article 6.36 shall impose tort liability upon OWNER or any of its employees.

6.37 *Sales, Consumer, Use and Similar Taxes*

CONTRACTOR is financially responsible for applicable federal, state, and local taxes on all items, including, without limitation, materials, labor, equipment, supplies and services furnished by CONTRACTOR, and all taxes arising from operations of CONTRACTOR pursuant to the Contract Documents. OWNER is exempt from federal excise tax, and a certificate of exemption shall be provided upon request of CONTRACTOR. CONTRACTOR is financially responsible for applicable charges and fees for all insurance and bonds required by the Contract.

*Use of Project Site and Premises*

6.38 During progress of the Work, CONTRACTOR shall maintain the Work, Project site and surrounding areas free from accumulation of debris, waste material or rubbish caused by CONTRACTOR operations. All crates, cartons, paper, and other flammable waste materials shall be removed from all areas of the Work and/or Project site and shall be properly disposed of at the end of each day. CONTRACTOR shall remove from all areas of the Work and/or Project site all excess materials, tools, construction equipment, machinery, and temporary facilities no longer required for the Work.

6.39 CONTRACTOR shall restrict all construction equipment, material storage and worker operations to the Project site, lands, and/or areas identified in the Contract Documents and to other lands and areas allowed by permits, right of ways, easements and/or laws and regulations. CONTRACTOR is strictly liable and assumes full responsibility for any damage to any such land, area, occupant and/or property of OWNER and any adjacent land, area, right of way, property, occupant and/or pedestrian thereof.

6.40 CONTRACTOR shall not cause, permit or allow structural loading in excess of safe limits or where such loading may induce stresses and/or pressures endangering:

6.40.1 any part of the Work under construction, completed Work or existing improvements on the Project site;

6.40.2 any part of the Work under construction, completed Work or existing improvements adjacent to the Project site.

6.41 ***Project Record Documents***

CONTRACTOR shall prepare and maintain on the Project site, a current, accurate and complete set of all Drawings, Specifications, Addenda, Change Orders, Construction Directives, ARCHITECT written interpretations and clarification, Shop Drawings, Product Data and Samples, Construction Schedules, denoted and annotated to reflect all changes, revisions, and substitutions during construction of the Work, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. A copy of such project record documents will be transmitted to OR in accordance with related sections of the Contract Documents. CONTRACTOR will update the record documents on a weekly basis. Project record documents shall be made available for inspection and use by, but not limited to, OR, ARCHITECT and all authorities having jurisdiction. Upon completion of the Work and before application for final payment, CONTRACTOR shall submit, in accordance with related provisions of the Contract Documents, one complete set of project record documents to the ARCHITECT, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

***Safety and Protection***

- 6.42 Within ten (10) days of the effective date of the Contract, the CONTRACTOR shall submit its Safety Program that, at a minimum, complies with all local, state and federal safety standards, and any safety standards that may be established by the OWNER. The CONTRACTOR shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. CONTRACTOR shall designate a competent person trained and certified in the OSHA Construction Outreach 10-30 hour programs; trained and certified in first aid and CPR and who shall have the responsibility and full authority to enforce the CONTRACTOR's Safety Program including stopping the Work when safety problems are identified and implementing corrective actions.. This competent person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the CONTRACTOR's Safety Programs.
- 6.43 CONTRACTOR shall provide and maintain at the Project site adequate first-aid supplies for minor injuries and for posting emergency "What to Do" information at the Project.
- 6.44 CONTRACTOR shall take all reasonable safety precautions related to the Work of this Contract, and shall provide reasonable protection to prevent damage, injury, or loss to:
- 6.44.1 employees or personnel related to the Work on the Project site and other persons who may be affected thereby;
  - 6.44.2 the Work, material, and equipment to be incorporated therein, whether in storage on or off the Project site, under the care, custody, or control of CONTRACTOR or Subcontractors;
  - 6.44.3 other property at the Project site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of the Work. CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss;

- 6.44.4 CONTRACTOR shall erect and maintain, as required by existing Project site conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities;
- 6.44.5 CONTRACTOR and Subcontractors shall continuously protect the Work, and every portion thereof, OWNER property, and the property of others, from damage, injury, or loss arising from weather conditions, vandals, and/or in connection with the Project and/or in connection with any Work of the Contract Documents;
- 6.44.6 CONTRACTOR and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of OWNER;
- 6.44.7 CONTRACTOR will remove all mud, water, or other elements required for the proper protection and safe prosecution of the Work;
- 6.44.8 CONTRACTOR shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury, loss and/or damage;
- 6.44.9 CONTRACTOR shall promptly provide notice to OR and other designated OWNER representatives of all accidents arising out of or in connection with the Work, causing death, personal injury, or property damage, full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to OR and other designated OWNER representatives.

6.45 ***Hazard Communication Plan***

CONTRACTOR is responsible for identifying, coordinating, maintaining and any exchange of material data safety sheets or other hazard information requiring dissemination or distribution between CONTRACTOR, Subcontractor, and/or others.

6.46 ***Emergencies***

In an emergency affecting the safety or protection of persons or property of OWNER or adjacent to OWNER, CONTRACTOR, without special instructions or authorization from OR or ARCHITECT, is obligated to act to prevent threatened damage, injury or loss due to, but not limited to, occurrences such as fire, flood, earthquake, or other soil and/or geological movements. CONTRACTOR shall provide notice to ARCHITECT and OR if CONTRACTOR believes any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ARCHITECT and OR determine a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Construction Directive may be issued to document the consequences of such action. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

6.47 ***Shop Drawings, Samples, Product Data and Material Lists***

- 6.47.1 Shop Drawings: CONTRACTOR shall prepare and/or cause to be prepared and shall submit all required Shop Drawings to ARCHITECT, with concurrent copy to the OR, for ARCHITECT review and approval in accordance with the OR accepted schedule of Shop Drawings and Sample submittals. All Shop Drawing submittals shall be identified and shall be submitted in accordance with the applicable requirements of related Division 01 General Requirements. Shop Drawings will be complete in respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ARCHITECT the materials and equipment CONTRACTOR proposes to provide and to enable ARCHITECT to review the information for the limited purposes as set forth in Articles 6.50 and 6.51.
- 6.47.2 Samples: CONTRACTOR shall prepare and/or cause to be prepared and shall submit all required Samples to ARCHITECT, with concurrent copy to the OR, for ARCHITECT review and approval in accordance with the OR accepted schedule of Shop Drawings and Sample submittals. All Sample submittals shall be identified and shall be submitted in accordance with the applicable requirements of related Division 01 General Requirements. Each Sample will be clearly identified as to material, supplier, pertinent data such as catalog number, and the use for which intended and otherwise as ARCHITECT may require to enable ARCHITECT to review the submittal for the limited purposes required by Articles 6.50 and 6.51.
- 6.47.3 Product Data and Material Lists: CONTRACTOR shall prepare and/or cause to be prepared and shall submit all required Product Data and material lists to ARCHITECT, with concurrent copy to the OR, for ARCHITECT review and approval in accordance with the OR accepted schedule of Shop Drawings and Sample submittals. All Product Data and material lists shall be identified and shall be submitted in accordance with the applicable requirements of related Division 01 General Requirements. Each Product Data and material list will be complete with respect to manufacture's data, supplier, installation instructions, color charts, compliance with recognized codes and standards, performance characteristics, diagrams and templates, catalog cuts, schedules, illustrations, materials, specified performance and design criteria, and similar data to show ARCHITECT the use for which intended and otherwise as ARCHITECT may require to enable ARCHITECT to review the information for the limited purposes required by Articles 6.50 and 6.51.

***Submittal Procedures***

- 6.48 Prior to the submission of each Shop Drawing, Sample, Product Data and/or material list CONTRACTOR shall have determined and verified:
- 6.48.1 all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto;
- 6.48.2 all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work;

- 6.48.3 all information relative to the sole responsibility of CONTRACTOR in respect to means methods, techniques, sequences, and procedure of construction and safety precautions and programs incident thereto.
- 6.49 Each submittal shall bear a stamp or specific written indication signifying CONTRACTOR has satisfied CONTRACTOR obligations under the Contract Documents with respect to CONTRACTOR review, coordination and approval of that submittal. Each submittal shall bear written identification of all Specification section numbers and/or Drawing title block references the submittal is intended to address.
- 6.50 At the time of each submission, CONTRACTOR shall give ARCHITECT specific written notice of such variations, if any, that the Shop Drawings, Samples, Product Data and material lists submitted have from the requirements of the Contract Documents. Such notice shall be in a communication separate from, but included with each submittal, and in addition, CONTRACTOR shall cause a specific notation to be made on each Shop Drawing, Sample, Product Data and material list submitted to ARCHITECT for review and approval of each such variation.
- 6.51 ARCHITECT will review and approve Shop Drawings, Samples, Product Data and material lists in accordance with the OR accepted Construction Schedule of Shop Drawings and Sample submittals. ARCHITECT review of and approval will be only to determine if the items covered by the submittals will, after installation or incorporation into the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ARCHITECT review and approval will not extend to means, methods, techniques, sequences or procedures of construction, except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called out for by the Contract Documents, or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make and/or cause to be made corrections required by ARCHITECT, and shall return the required number of corrected copies of Shop Drawings, Product Data and material lists and shall submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ARCHITECT on previous submittals.
- 6.52 ARCHITECT review of and approval of Shop Drawings, Samples, Product Data and material lists shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ARCHITECT attention to each variation at the time of submission as required by Article 6.49.3 and ARCHITECT has given written approval of each variation by specific written notation thereof incorporated in or accompanying the Shop Drawing, Sample, Product Data and material list approval; nor will any approval by ARCHITECT relieve CONTRACTOR from responsibility for complying with the requirements of Article 6.49.
- 6.53 Where a Shop Drawing, Sample, Product Data and material list is required to be submitted by the Contract Documents or the Detailed Construction Schedule of Shop Drawings and Sample submissions accepted by OR, any related Work performed prior to ARCHITECT review and approval of the pertinent submittal will be at the sole expense, risk, and responsibility of CONTRACTOR.

6.54 ***Continuing the Work***

CONTRACTOR acknowledges that all time deadlines under the Contract are of the essence. The school facilities being built for OWNER under this Contract are critically needed to provide seats, classrooms and other facilities for the children of Fulton County Schools. If CONTRACTOR stops, delays, postpones and/or otherwise suspends the Work or any portion thereof, except in cases of emergency or encountering those conditions as set forth in Articles 4.2, 4.3, 4.5 and 4.6, CONTRACTOR will cause irreparable harm; including without limitation the renting and/or leasing of temporary classroom and support facilities, the busing of students to temporary alternative educational facilities, and the providing of temporary nutrition services. Accordingly, at all times, CONTRACTOR shall continue to perform the Work in accordance with the Detailed Construction Schedule and/or as otherwise directed in writing by a Construction Directive. CONTRACTOR shall proceed with the Work even if CONTRACTOR contends OWNER, and/or anyone OWNER is legally responsible for, has materially and/or otherwise breached the Contract; and even if there exists a dispute; disagreement, or a proceeding and/or Claim is pending subject to OWNER'S continuing obligation to pay CONTRACTOR in accordance with the terms of the Contract Documents. CONTRACTOR acknowledges that it shall not suffer any irreparable harm by continuing to perform the Work and/or any disputed Work as there is a fair and reasonable method of full compensation provided for under this Contract, as found in, but without limitation, Articles 10, 11, 12, 14 and 16 of these General Conditions. CONTRACTOR and OWNER agree that the measure of damages for breach of Contract shall be the sole measure of damage used in any dispute, proceeding, arbitration and/or litigation and in every and all disagreements between them, unless expressly stated otherwise in this Contract. The Work, portions thereof, and/or disputed Work shall not be stopped, delayed, postponed and/or otherwise suspended pending the resolution of any dispute, Claim, proceeding and/or disagreement of every kind. This provision constitutes an advance waiver by CONTRACTOR of any right, if any, whenever acquired, to rescind this Contract.

6.55 ***Right to Audit***

The OWNER shall have the right to review, obtain, inspect, audit and copy all the written and electronically stored records of CONTRACTOR pertaining to the Contract and/or Work and any Claim in connection with any of the foregoing. CONTRACTOR agrees to maintain such records and allow such audits for a period of up to four (4) years following the date the Notice of Completion is recorded. This provision applies equally to electronic records of the CONTRACTOR, including any records under its possession, custody or control. The audits may be performed by employees of OWNER and/or by an outside representative engaged by the OWNER. CONTRACTOR records as referred to in this Contract shall include, without limitation, any and all information, materials and data of every kind and character, such as, but not limited to, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, memoranda, shipping invoices and/or tickets, delivery tickets, bills of lading and cost reports. Such records may also include, written policies and/or procedures, time sheets, equipment and/or material inventories, payroll registers, payroll records, cancelled payroll checks, subcontract files (including proposals and/or bids of successful and unsuccessful Offerors, bid recaps, etc.), original estimates, estimating worksheets, correspondence, Change Order/Change Order Proposal! and/or Change Order request files (including documentation covering negotiated settlements), backcharge logs and supporting documentation, invoices and related payment documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other CONTRACTOR records which may have a bearing on matters of interest to the OWNER in connection with the CONTRACTOR dealings with the OWNER.

CONTRACTOR shall require all of its payees (e.g., Subcontractors, suppliers, materialmen, employees, officers, directors and others) to comply with the provisions of this Article 6.55 by expressly including the requirements hereof in all written contracts with all such payees. Such requirements are to include that these flow-down right to audit provisions shall be included by such payees in all of their contracts with their Subcontractors, sub-Subcontractors, materialmen, etc.

#### 6.56 *General Warranty and Guarantee*

6.56.1 CONTRACTOR warrants and guarantees to OWNER, ARCHITECT, and ARCHITECT Consultants all Work shall be in accordance with the Contract Documents and will not be defective. CONTRACTOR warranty and guarantee hereunder excludes defects and/or damages caused by:

6.56.1.1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or suppliers;

6.56.1.2 normal wear and tear under normal usage.

6.56.2 CONTRACTOR obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following shall constitute acceptance of Work not in accordance with the Contract Documents or shall serve as a release of CONTRACTOR obligations to perform the Work in accordance with the Contract Documents:

6.56.2.1 observation by ARCHITECT or ARCHITECT Consultant;

6.56.2.2 recommendation of any progress and/or final payment by ARCHITECT;

6.56.2.3 issuance of a certificate of Substantial Completion, Partial Use or Occupancy or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.56.2.4 any acceptance by OWNER or any failure to do so;

6.56.2.5 any review and approval of a Shop Drawing, Sample, Product Data or material list submittal or the issuance of a notice of acceptability by ARCHITECT pursuant to Article 14.12;

6.56.2.6 any inspection, test and/or approval by others;

6.56.2.7 any correction of defective Work by OWNER.

#### 6.57 *Indemnification*

In addition to Article 6.60 and any other part of the Contract Documents, and to the fullest extent permitted by law, CONTRACTOR and its performance bond surety, shall defend, indemnify, and hold harmless OWNER, OR, OWNER employees, representatives and/or agents, OWNER Consultants from and against claims, actions, damages, losses, penalties, costs and expenses (including, but not limited to attorneys' fees and costs including fees of consultants) arising out of or resulting from performance of the Work, including but not limited to, CONTRACTOR or its Subcontractors use of the Project site; CONTRACTOR

failure to pay Subcontractors and/or others; CONTRACTOR or its Subcontractors construction of the Work, or failure to construct the Work, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnities; or any act, omission, negligence, or willful misconduct of CONTRACTOR or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees whether caused by the acts or omissions of CONTRACTOR, its Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether the allegations underlying such claims, action, damage, loss, penalty, cost or expense are with or without merit, true or false and whether or not caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of defense and/or indemnity, which would otherwise exist as to a party, person, or entity described herein. Nothing set forth in this Article 6.57 is intended to provide indemnification for those situations precluded by law.

**6.58 *Indemnification by Subcontractors and Their Sureties***

In addition to Articles 6.57 and 6.60 and any other part of the Contract Documents, CONTRACTOR shall ensure by subcontract agreement that each Subcontractor, and each performance bond of, if any, a Subcontractor, shall defend, indemnify, and hold harmless OWNER, OR, OWNER employees, representatives and/or agents, including, without limitation, and OWNER Consultants from and against claims, actions, damages, losses, penalties, costs and expenses, including, but not limited to, attorneys' fees and costs, including consultants arising out of or resulting from: performance of the Work including but not limited to; Subcontractors use of the Project site; Subcontractors failure to pay suppliers or others; Subcontractors construction of the Work or failure to construct the Work or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the indemnities; or any act, omission, negligence, or willful misconduct of Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees whether caused by the acts or omissions of Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether the Subcontractor itself is free from fault or the allegations underlying such claim, action, damage, loss, penalty, cost or expense are with or without merit, true or false, and whether or not caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of defense and/or indemnity, which would otherwise exist as to a party, person, or entity described herein. Nothing set forth in this Article 6.58 is intended to provide indemnification for those situations precluded by law.

**6.59 *Joint and Several Liability***

[Intentionally left blank]

**6.60 *No Limitation on Obligations to Indemnify***

CONTRACTOR and each Subcontractor obligation to indemnify, hold harmless and defend the indemnities under Articles 6.57 and 6.58 and shall also include, without limitation, any and all claims, actions, damages, losses, penalties, expenses and costs: for injury to persons and property and death of any person; for breach of any warranty and/or guarantees, express or implied; for failure of CONTRACTOR or Subcontractors to comply with any applicable

governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work, except as may be precluded by statute. These obligations shall survive final payment, Final Completion, acceptance of the Work, any termination of the Contract and/or any termination of CONTRACTOR right to proceed with the Work in whole and/or in part.

END OF ARTICLE

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## **ARTICLE 7 – CONSTRUCTION BY OWNER OR BY SEPARATE WORK CONTRACT**

### **7.1 *OWNER Right***

OWNER reserves the right to perform the Work, portions thereof and other Work related to the Project with OWNER forces and/or to award Separate Work Contract to perform Work relative to utilities, Work and/or the Project.

### **7.2 *Work Not Identified in Bidding Documents***

In the event the Work is not identified in the Bidding Documents and upon the election to perform Work with OWNER forces or by Separate Work Contract, OR shall provide notice to CONTRACTOR prior to commencing any such Work. If CONTRACTOR believes the performance thereof justifies an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall provide notice to ARCHITECT and OR who shall promptly investigate. OR may, in consideration of, but not limited to, the recommendation of ARCHITECT, issue a Construction Directive. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

### **7.3 *Work Identified in Contract Documents***

If the Work or a portion thereof is identified in the Contract Documents and upon OWNER election to perform the Work or a portion thereof with OWNER forces or Separate Work Contract, OWNER may, in addition to the OWNER rights as set forth in Article 10, proceed in accordance with, but not limited to, Articles 15.2 through 15.4.

### **7.4 *CONTRACTOR Duties and Responsibilities***

7.4.1 CONTRACTOR shall make any revisions necessary to the Preliminary and Detailed Construction Schedules to coordinate, sequence and schedule Work activities associated with the Project, including but not limited to Work by the CONTRACTOR, OWNER forces and/or Separate Work Contract(s).

7.4.2 Allow the delivery and storage of materials and/or equipment of OWNER forces and/or Separate Work Contract.

7.4.3 Not hinder or otherwise delay any Work associated with the Project.

7.4.4 Subject to the provisions of Section 7.4.6 or as provided otherwise in the Contract Documents and in order to fully integrate the Work of OWNER forces and/or Separate Work Contract, CONTRACTOR shall perform all cutting, fitting, patching and connecting of the Work with and to the Work of OWNER forces and/or Separate Work Contract. CONTRACTOR shall seek, and not be subject to unreasonable withholding of written consent from ARCHITECT and/or Separate Work Contract prior to cutting, excavating, and/or otherwise altering Work of OWNER forces and/or Separate Work Contract.

- 7.4.5 If the Contract Documents specify cutting, fitting, patching and connecting of the Work is performed by OWNER forces and/or Separate Work Contract, CONTRACTOR shall not unreasonably withhold consent to cutting, fitting, patching or otherwise altering Work of CONTRACTOR.
- 7.4.6 If any part of the Project depends upon Work of OWNER forces and/or Separate Work Contract, CONTRACTOR shall examine and immediately provide notice to ARCHITECT and OR of any defective Work in the Work of OWNER forces and/or Separate Work Contract rendering it unsuitable for the proper execution of subsequent CONTRACTOR Work. Failure of CONTRACTOR to provide notice shall constitute acceptance of preceding Work as fit and proper for execution of subsequent Work. ARCHITECT and OR shall promptly investigate and the OR may, in consideration of, but not limited to, the recommendation of ARCHITECT, issue a Construction Directive to CONTRACTOR, OWNER forces and/or Separate Work Contract. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.
- 7.4.7 [Intentionally left blank]
- 7.4.8 CONTRACTOR shall not damage or otherwise endanger the Work and/or property of OWNER forces and/or Separate Work Contract. In the event CONTRACTOR causes damage or is deemed responsible by the OR for the cause of damage to Work and/or property of OWNER forces and/or Separate Work Contract, OR may issue a Construction Directive to immediately remedy such damage. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.
- 7.4.9 CONTRACTOR shall be completely responsible for, and shall provide all means, methods and materials to fully protect and/or otherwise prevent damage to the Work until Substantial Completion.
- 7.4.10 If OWNER elects to perform any portion of the Work as per Articles 7.2 and/or 7.3, CONTRACTOR shall perform and/or otherwise continue to perform the remaining portions of the Work and shall fully comply with CONTRACTOR obligations as set forth in Article 6.54.

## 7.5 **OWNER Roles**

OWNER roles are to:

- 7.5.1 participate in, or cause participation in, the coordination, sequencing and scheduling of CONTRACTOR activities relative to the Work, Work of OWNER forces and/or Separate Work Contract;
- 7.5.2 [Intentionally left blank]
- 7.5.3 relative to the Work, Work of OWNER forces and/or Separate Work Contract;

7.5.4 not hinder or otherwise delay the Work of CONTRACTOR, OWNER forces and/or Separate Work Contract.

END OF ARTICLE

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## **ARTICLE 8 - OWNER DUTIES, RIGHTS AND RESPONSIBILITIES**

### **8.1 *OWNER Representative***

OWNER Representative (OR) is the OWNER representative during the Work, or any portion thereof, who will be identified at the initial job start meeting as provided in Article 2.6.2. The duties, responsibilities and authority limits of the OWNER Representative are as set forth in the Contract Documents.

8.1.1 OWNER shall be represented by the OR. OR is the OWNER's Representatives in providing the services required to manage the Contract between OWNER and CONTRACTOR, and the agreement between ARCHITECT and OWNER. CONTRACTOR shall ensure: (i) that all changes in CONTRACTOR services or Work to be performed shall only be allowed pursuant to written agreement or direction; (ii) that all contractually binding communications with OWNER shall be through OR; and (iii) that in the event CONTRACTOR receives any communication from an employee or other representative of OWNER, CONTRACTOR will immediately advise OR of the content of said communication after receipt of said communication by CONTRACTOR.

8.1.2 In providing the services required to manage the Contract between OWNER and CONTRACTOR and the agreement between the ARCHITECT and OWNER, OR shall endeavor to maintain a working relationship with the ARCHITECT and CONTRACTOR on behalf of OWNER. However, nothing herein should be construed to mean or imply that OR or OWNER assumes any of the responsibilities or duties of the ARCHITECT or CONTRACTOR or that the OWNER waives any rights to strictly enforce the obligations of the ARCHITECT or CONTRACTOR under the applicable contracts. The ARCHITECT shall be solely and exclusively responsible for the design aspects of the Project. The ARCHITECT shall design and inspect the Project in accordance with the agreement between the ARCHITECT and OWNER. CONTRACTOR shall be solely and exclusively responsible for the construction aspects of the Project, including all means, methods, techniques, sequences and procedures used in construction of the Project in accordance with the Contract between CONTRACTOR and OWNER.

### **8.2 *Communication by OWNER***

Unless noted otherwise, OWNER shall issue all OWNER communications to CONTRACTOR, ARCHITECT, and/or others, through the OR.

### **8.3 *ARCHITECT Replacement***

In case of termination and/or replacement of ARCHITECT, OWNER has the right to engage the professional services of an ARCHITECT or may perform ARCHITECT duties and responsibilities with ARCHITECT of direct OWNER employment. The status of the replacement ARCHITECT shall be as of original ARCHITECT as defined within the Contract Documents.

8.4 ***Removal of Staff***

OWNER shall have the right, but not the obligation, to require the removal from the Work any superintendent, staff member, agent, or employee of CONTRACTOR, Subcontractor, vendor, and material or equipment supplier for cause.

8.5 ***Access to Lands, Reference and Reports***

OWNER duties in respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Article 4.4.

8.6 ***Hazardous Materials, Substances, Wastes, Lead Based Paint and Petroleum***

OWNER responsibility in respect of undisclosed Asbestos, PCB's, Petroleum, Hazardous Materials, Hazardous Substances, Hazardous Wastes, Lead Based Paint, Radioactive Materials uncovered, revealed and/or exposed at the Project site are as set forth in Articles 4.5 and 4.6.

8.7 ***Insurance***

OWNER may provide additional insurance as it deems necessary. However, nothing stated in this Agreement shall require OWNER to carry insurance or in any manner waive its right to assert sovereign immunity.

8.8 ***Right to Audit***

OWNER right to audit as set forth in Article 6.55.

8.9 ***Safety Precautions and Programs***

OWNER has no duty, responsibility or obligation for any and/or all safety precautions and/or programs as specified in Article 6 except which is expressly called out in the Contract Documents.

8.10 ***Right to Perform Work***

OWNER rights to perform the Work or portions thereof are as set forth in Articles 7 and 15.

8.11 ***Direct Additions, Deletions or Revisions to the Work***

OWNER rights to direct additions, deletions and/or revisions to the Work are as set forth in Article 10.

8.12 ***Provide Tests and Inspections***

OWNER responsibility in providing certain tests, inspection and approvals are as set forth in Article 13.

8.13 ***Furnish Data, Information and Services***

OWNER shall promptly furnish all data, information and services required of OWNER under the Contract Documents and shall make payments to CONTRACTOR promptly when they are due as set forth in Article 14.

8.14 ***Suspend, Delay, Interrupt, Disrupt, Re-sequence Work***

OWNER right to suspend the Work is as set forth in Article 15.

8.15 ***Terminate Right to Proceed with the Work***

OWNER right to terminate CONTRACTOR right to proceed with the Work is as set forth in Article 15.

8.16 ***Terminate Contract for Convenience***

OWNER right to terminate Contract for OWNER convenience is as set forth in Article 15.

8.17 ***Assess Costs, Expenses and/or Damage***

OWNER has the right to assess costs, expenses and/or damages against Contract funds, the CONTRACTOR, and/or the performance bond.

8.18 ***Means, Methods and Techniques***

OWNER has no duty, responsibility or obligation to supervise, direct, control or have authority over, CONTRACTOR means, methods, techniques, sequences, and/or procedures of construction unless otherwise specified in the Contract Documents.

8.19 ***Laws and Regulations***

OWNER has no duty, responsibility or obligation for CONTRACTOR failure to comply with applicable laws and regulations in furnishing of or performance of the Work.

8.20 ***Furnishing and Performance of Work***

OWNER has no duty, responsibility or obligation for CONTRACTOR failure in furnishing of or performance of the Work in strict accordance with the Contract Documents.

8.21 ***Safety Evaluation and a Contractor Performance Evaluation***

OWNER has the right to perform and complete a Safety Evaluation and a Contractor Performance Evaluation at the end of the Project and at any time during the course of the Project.

1.22 ***Other OWNER Rights***

Other OWNER rights, duties and responsibilities not expressly set forth in this Article.

END OF ARTICLE

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## **ARTICLE 9 - ARCHITECT ROLE DURING CONSTRUCTION**

### **9.1 *ARCHITECT - General***

The authority and limitations of ARCHITECT during construction of the Work are as set forth in the Contract Documents and shall not be extended, waived, altered or diminished without written consent of ARCHITECT and OR. ARCHITECT has the responsibilities and authority established by law.

### **9.2 *Periodic Site Visits***

ARCHITECT will periodically visit the Project site as determined by OR in order to observe and witness the general progress and quality of the Work of CONTRACTOR. ARCHITECT periodic observation of the Work on behalf of OWNER is to provide general determinations if the Work is proceeding in accordance with the Contract Documents. ARCHITECT is not obligated to perform continuous on site Project inspections in order to determine the quality of materials and/or quantities of Work. Based on such periodic visits and observations, ARCHITECT shall provide written communications to the OR detailing the overall progress of the Work and any observed defective Work of CONTRACTOR. ARCHITECT visits and on site Project observations are subject to all limitations on ARCHITECT authority and responsibility as set forth in Articles 9.12 through 9.16, and particularly, but without limitation, during or as a result of ARCHITECT on site visits or observations of Work of CONTRACTOR, ARCHITECT will not supervise, direct, control or have authority over or be responsible for CONTRACTOR means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performance of the Work.

### **9.3 *ARCHITECT Project Representative***

If OR and ARCHITECT agree to, ARCHITECT shall furnish an on-site ARCHITECT project representative or other staff representatives who shall provide more continuous observation of the Work, Project or portion thereof. The levels and limitations of authority, duties and responsibilities of ARCHITECT project representative and related staff shall be as set forth, but not limited to, this Article. However, nothing in this paragraph shall require OWNER to provide an on-site ARCHITECT project representative.

### **9.4 *Request for Information of the Contract Documents***

9.4.1 ARCHITECT shall provide the OR, within a reasonable time, clarifications and/or interpretations of the Contract Documents binding CONTRACTOR and OWNER for the purposes of proceeding with the Work. Clarifications and/or interpretations may be in the form of drawings and/or other written instruments as determined by ARCHITECT, which will be reasonably inferable from and consistent with the intent of the Contract Documents

9.4.2 A Request for Information shall be prepared by CONTRACTOR and submitted by CONTRACTOR to ARCHITECT with concurrent copy to OR. A Request for Information shall be submitted:

9.4.2.1 a minimum of nine (9) days prior to commencement of any Work indicated in the Detailed Construction Schedule, in order to clarify the intent of the Contract Documents relative to the Work;

- 9.4.2.2 upon discovery of minor conflicts or discrepancies in the Work discovered during actual performance of the Work.
- 9.4.3 A Request for Information shall reference all the applicable Contract Documents including division and/or Specification section, detail number, Drawing and/or plan designation. ARCHITECT shall provide the OR with a response to a Request for Information within seven (7) days after receiving a request pursuant to Articles 9.4.2.1 and 9.4.2.2., and OR shall provide a response to the CONTRACTOR within nine (9) days after receipt of a Request for Information pursuant to Articles 9.4.2.1 and 9.4.2.2.
- 9.4.4 Responses completed within the time limits as specified in Article 9.4.3 shall not give rise to or establish the basis for any Claim seeking adjustment to the Contract Amount, Milestones and/or Contract Time based on, but without limitation, for any damages due to delay, acceleration, disruption, hindrance or similar causes.
- 9.4.5 A Request for Information submitted by CONTRACTOR outside the time limits as specified in Article 9.4.2.1 shall not give rise to or establish the basis for any Claim seeking adjustment to the Contract Amount, Milestones and/or Contract Time based on, but without limitation, delay, acceleration, disruption, hindrance and/or similar causes.
- 9.4.6 In the event CONTRACTOR believes the information and/or interpretations as provided in the response to the Request for Information establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, the directives of the OR shall be final for the purpose of proceeding with the Work. If CONTRACTOR believes a Construction Directive and/or a response as provided in the Request for Information establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of receipt of the response to the Request for Clarification.

9.5 ***Authorized Minor Variations in the Work***

ARCHITECT may direct and OR may authorize minor variations in the technical aspects of the Work from the requirements of the Contract Documents. Authorized minor variations in the Work shall be consistent with the overall intent of the design concept of providing a complete functioning Project. Minor variations in the Work directed by ARCHITECT and authorized by OR may be accomplished by issuance of a Construction Directive. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

9.6 ***Disapproval or Rejection of Defective Work***

ARCHITECT has authority to recommend to OR disapproval of and/or rejection of Work deemed defective or Work ARCHITECT deems will not result in a complete Project as indicated in the Contract Documents. ARCHITECT has authority to require additional testing and/or special inspection of the Work as set forth in Article 13.9, whether or not such Work is fabricated, installed and/or completed.

***Shop Drawings, Change Order Proposals, Construction Directive and Payments***

9.7 In regards to ARCHITECT duties relative to Shop Drawings, Product Data, material lists and Samples reference is made to the provisions of Article 6.

9.8 In regards to ARCHITECT duties relative to Request for Proposals, Change Order Proposals, Construction Directive and Change Order, reference is made to Articles 10, 11, and 12.

9.9 In regards to ARCHITECT duties relative to Applications for Payment reference is made to Article 14.

9.10 ***Unit Prices***

ARCHITECT will review and make recommendations to OR of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR.

9.11 ***Disputes, Disagreements and other Matters***

ARCHITECT shall serve as the initial interpreter of the requirements of the Contract Documents, acceptability of the Work thereunder and proposed adjustments to the Contract Amount, Milestones and/or Contract Time. Disputes, disagreements and other matters relating to the acceptability of Work, interpretations of the Contract Documents pertaining to the performance of and furnishing of the Work or proposed adjustments to the Contract Amount, Milestones and/or Contract Time will be referred initially to ARCHITECT with concurrent copy to OR, ARCHITECT shall render a formal recommendation to OR whose decision shall be final and binding on CONTRACTOR for the purpose of proceeding with the Work. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

***Limitations of ARCHITECT Duty and Authority***

9.12 Neither ARCHITECT authority, nor a recommendation made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of ARCHITECT to CONTRACTOR, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

9.13 ARCHITECT will not supervise, direct, control, have authority over or in any way be responsible for the means, methods, techniques, sequences and/or procedures of CONTRACTOR, or the safety precautions and programs of CONTRACTOR, or for any failure by CONTRACTOR to comply with laws and regulations applicable to the furnishing of or performance of the Work. ARCHITECT shall not be responsible for the failure of CONTRACTOR to furnish and/or perform the Work in accordance with the Contract

Documents.

- 9.14 ARCHITECT shall not be responsible for acts and/or omissions of CONTRACTOR, Subcontractor, supplier or of any other persons and/or organizations furnishing and/or performing any of the Work.
- 9.15 ARCHITECT review of the application for final payment and accompanying documentation and all maintenance and operation manuals, project record documents, Detailed Construction Schedule, certificates and test results, approvals, guarantees and warranties, and other documentation required to be delivered as per Article 14.19 will only be to generally determine the content complies with the requirements of, and in case of tests, approvals and certificates of inspection, the results certified indicate compliance with the Contract Documents.
- 9.16 The limitations of authority and responsibility as set forth in Articles 9.12 through 9.15 shall also apply to ARCHITECT Consultant, ARCHITECT project representative and assistants.

END OF ARTICLE

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.1 *OWNER Right to Add, Delete or Revise the Work***

Without negating the Contract or providing notice to any surety, and at any time and/or times, OR has the right to direct additions, deletions, and/or revisions in the Work. A Change Order or Construction Directive shall serve to authorize additions, deletions and/or revisions in the Work. CONTRACTOR, upon receipt of any such document shall immediately proceed with the Work to be performed under the applicable conditions of the Contract Documents.

### **10.2 *CONTRACTOR not Entitled to Change in Contract Amount, Milestones and/or Contract Time***

CONTRACTOR shall not be entitled to an increase in the Contract Amount, Milestones and/or Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Articles 3.16.1 and 3.16.2 except in case of emergency as set forth in Article 6.46 or in the case of uncovering Work as set forth in Article 13.17.2.

### **10.3 *Request for Proposal***

A Request for Proposal may be issued to CONTRACTOR along with any necessary Drawings and Specifications as determined by ARCHITECT. CONTRACTOR shall, within the specified time periods, provide a Change Order Proposal which contains proposed adjustments to the Contract Amount, Milestones and/or Contract Time reflective of the Work specified in the Request for Proposal.

### ***Construction Directive***

10.4 A Construction Directive shall not adjust the Contract Amount, Milestones and/or Contract Time but may lead to a Change Order Proposal.

10.5 Upon OR issuance of a Construction Directive, CONTRACTOR shall promptly comply with the directives set forth herein.

10.6 If CONTRACTOR believes an OWNER issued Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

### ***Change Order Proposal***

10.7 A Change Order Proposal shall include all estimates, breakdowns, and costs, data and/or information required in order to validate a proposed adjustment in the Contract Amount, Milestones and/or Contract Time. CONTRACTOR shall not be entitled to any adjustment in the Contract Amount, Milestones and/or Contract Time for preparing a Change Order Proposal whether ultimately accepted or not.

- 10.8 ARCHITECT shall serve as the initial interpreter of proposed adjustments to the Contract Amount, Milestones and/or Contract Time. ARCHITECT shall review labor, material and equipment costs and proposed adjustments to the Milestones and/or Contract Time and shall render a recommendation to OR whose decision shall be final for the purpose of proceeding with the Work.
- 10.9 If CONTRACTOR and OR agree on all the proposed adjustments, if any, in the Contract Amount, Milestones and/or Contract Time contained within an additive and/or deductive Change Order Proposal, OR shall direct issuance of a Change Order for mutual execution by the parties.
- 10.10 If CONTRACTOR and OR are only able to achieve partial agreement on the proposed adjustments in the Contract Amount, Milestones and/or Contract Time contained within an additive Change Order Proposal, then OR shall direct issuance of a Change Order for mutual execution by the parties setting forth those undisputed adjustments in the Contract Amount, Milestones and/or Contract Time. CONTRACTOR shall, within ten (10) days of OR issuance of the Change Order, file a Claim as set forth in Article 16 for any remaining disputed portions of the Change Order Proposal.
- 10.11 If OR rejects an additive Change Order Proposal in its entirety, CONTRACTOR shall, within ten (10) days of OR issuance of the written rejection of the Change Order Proposal, file a Claim as provided for in Article 16.
- 10.12 If CONTRACTOR proposes no adjustments to the Contract Amount, Milestones and/or Contract Time or if OR believes the CONTRACTOR proposed adjustments to the Contract Amount, Milestones and/or Contract Time are insufficient, OR shall file a Claim as set forth in Article 16.

***Change Order***

- 10.13 A Change Order shall not have any reservation of rights and/or qualifying language placed on any Change Order.
- 10.14 OR and CONTRACTOR shall execute appropriate Change Orders covering:
  - 10.14.1 changes in the Work ordered pursuant to, but not limited to, Article 10.1;
  - 10.14.2 changes in the Contract Amount, Milestones and/or Contract Time which are agreed to by the parties;
  - 10.14.3 changes in the Contract Amount, Milestones and/or Contract Time which embody the substance of any decision rendered pursuant to Article 16. However, if CONTRACTOR fails or refuses to execute a Change Order within ten (10) days of OR issuance, CONTRACTOR shall file a written Claim in accordance with Article 16. Notwithstanding the filing of such a Claim, CONTRACTOR shall proceed with the Work as set forth in Article 6.54.

END OF ARTICLE

## **ARTICLE 11 - CHANGE OF CONTRACT AMOUNT**

### **11.1 *Contract Amount***

The Contract Amount constitutes the total compensation, subject to authorized adjustments, payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR under the Contract shall be at expense of CONTRACTOR without change in the Contract Amount.

### **11.2 *Change of Contract Amount***

The Contract Amount can only be changed by Change Order to the Contract.

### **11.3 *Cost of Work Relative to Contract Amount, Milestones and/or Contract Time***

The Cost of the Work for any adjustment to the Contract Amount relative to Article 12.6 shall be determined in accordance with the requirements of Articles 11.5, 11.6, and 11.7.

### **11.4 *Value of the Work***

The value of any Work covered by a Change Order Proposal or a Change Order shall be determined as follows:

11.4.1 where the Work involved is covered by unit prices contained within the Contract Documents, by application of such unit prices to the quantities of the items involved, subject to the provisions of Articles 11.9 through 11.12 inclusive;

11.4.2 where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum based on the Cost of the Work as determined by Articles 11.5 and 11.6 plus a CONTRACTOR fee for overhead and profit as determined in Article 11.7;

11.4.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement is not reached under Article 11.4.2, on the basis of Cost of the Work as set forth in Article 11.8 and determined by Articles 11.5 and 11.6 plus a CONTRACTOR fee for overhead and profit as determined in Article 11.7;

11.4.4 as determined in accordance with the applicable provisions of Article 16.

### **11.5 *Cost of the Work***

The term 'Cost of the Work' means the sum of all direct and indirect costs necessarily incurred and paid for by CONTRACTOR in the proper furnishing and/or performance of the Work, Except as otherwise may be agreed to by OR, such costs shall be in amounts no higher than those prevailing in the locality of the Work and/or Project and shall only include the following items and shall not include any of the costs in Article 11.6:

11.5.1 the actual payroll costs for employees in direct employ of CONTRACTOR in the performance of Work. Such employees shall include project managers, superintendents, foreman and other personnel employed full time at the Project

site. Payroll costs for project managers not employed full time on the Work shall be apportioned on the basis of their time spent on the Project site. Payroll costs shall include salaries and wages, costs of fringe benefits including social security contributions, unemployment insurance, excise and payroll taxes, old age, and fringe benefits required by agreement. The expenses of performing Work after regular hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OR;

- 11.5.2 cost of all materials and equipment furnished and incorporated into the Work, including costs of transportation, loading and unloading, storage and the cost of supplier's field services in connection therewith. All cash discounts, trade discounts, rebates and refunds and returns from sale of surplus materials and/or equipment shall accrue to OWNER and CONTRACTOR shall make provisions so they may be obtained by OWNER;
- 11.5.3 payments made by CONTRACTOR to Subcontractors for Work furnished and/or performed by Subcontractors. If required by OR, CONTRACTOR shall obtain competitive bids from Subcontractors and shall deliver such bids to OR. OR shall, upon recommendation of ARCHITECT, determine which bid shall be accepted. Subcontractor Cost of the Work and fee shall be determined in the same manner as for CONTRACTOR Cost of the Work and fee as provided for in Articles 11. 5, 11.6, and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable;
- 11.5.4 costs of consultants such as surveyors, testing agencies, engineers, architects, attorneys, and accountants employed for services specifically related to the Work.
- 11.5.5 Supplemental costs including the following:
  - 11.5.5.1 cost, including transportation, delivery and storage of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Project site and hand tools not owned by the workers which are consumed in the performance of the Work;
  - 11.5.5.2 rentals of all construction equipment and machinery whether rented by CONTRACTOR or others in accordance with rental agreements approved by OR, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof, all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery shall cease when the use thereof is no longer required for the Work;
  - 11.5.5.3 sales, consumer, use and/or similar taxes related to the Work, and for which CONTRACTOR is responsible for as imposed by laws and regulations;
  - 11.5.5.4 royalty payments and fees for permits and licenses;
  - 11.5.5.5 the cost of utilities, fuel and sanitary facilities at the Project site;

11.5.5.6 minor expenses such as telegrams, long distance phones calls, and telephone service at the Project site;

11.5.5.7 cost of premiums for additional bonds required because of changes in the Work.

#### 11.6 *Cost of the Work to Exclude*

The term Cost of the Work shall not include any of the following:

11.6.1 payroll costs and other compensation of CONTRACTOR officers, executives, principals, owners, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR for general administration of the Work all of which are considered to be administrative costs covered by the CONTRACTOR fee;

11.6.2 expenses of CONTRACTOR principal and branch offices of other than CONTRACTOR office located at the Project site;

11.6.3 any part of CONTRACTOR capital expenses, including interest on CONTRACTOR capital employed for the Work and charges against CONTRACTOR for delinquent payments;

11.6.4 cost of premiums for all bonds and for all insurance of CONTRACTOR that is not directly required for the Work being performed under the Contract Documents or the cost of premiums covered by Article 11.5.5.7;

11.6.5 costs due to negligence of CONTRACTOR, any Subcontractor, or anyone else directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment furnished in error and the repair and/or replacement of any damage to property;

11.6.6 other overhead or general expense costs of any kind and the costs of any item not specifically and expressly set forth in Article 11.5.

#### 11.7 *CONTRACTOR Fee*

The CONTRACTOR fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.7.1 a fee based on the following percentages of the various portions of the Work;

11.7.1.1 for costs incurred under Articles 11.5.1 and 11.5.2 the CONTRACTOR fee shall be fifteen (15) percent;

11.7.1.2 where one or more tiers of Subcontractors are included in the change the intent of Articles 11.5.1, 11.5.2, 11.5.3 and 11.7.1 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen (15) percent of the costs

incurred by such Subcontractor under Articles 11.5.1 and 11.5.2 and that any higher Subcontractor and CONTRACTOR will each be paid a fee of five (5) percent of the amount paid to the next lower tier Subcontractor;

- 11.7.1.3 no fee shall be payable on the basis of costs itemized under Articles 11.5.4, 11.5.5 and 11.6;
- 11.7.1.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in the CONTRACTOR fee by an amount equal to five (5) percent of such net decrease;
- 11.7.1.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR fee shall be calculated on the basis of the net change in accordance with Articles 11.7.1.1 through 11.7.1.4 inclusive.

#### 11.8 *Time and Material*

Whenever the Cost of the Work is to be determined in accordance with Article 11.4.3, CONTRACTOR shall maintain records thereof in accordance with generally accepted accounting practices and shall submit the itemized cost breakdown to OR in the following form:

##### 11.8.1 *Daily Time and Material Record:*

At the close of each work day, CONTRACTOR shall submit a daily time and material record, on a form prescribed by OWNER, to the OR, together with applicable delivery tickets, listing all labor, employees names, hours worked, wage classifications, materials, quantities, equipment size, type and identification number, and supplies involved for said work day, the location of the affected portion of the Work, for services and expenditures as authorized under Articles 11.5 and 11.7. An attempt shall be made to reconcile the daily time and material record, and the OR and the CONTRACTOR shall sign it. In the event of disagreement, each party to explain points, which cannot be resolved immediately, shall enter pertinent notes. Each party shall retain a signed copy of the daily time and material record. Daily time and material records of Subcontractors or others shall only be submitted through the CONTRACTOR.

#### *Unit Prices*

- 11.9 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the initial Contract Amount shall be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Bidding Documents. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Amount. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by OR in accordance with Article 9.10.

- 11.10 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to fully cover all overhead and profit for each separately identified item.
- 11.11 OR or CONTRACTOR may request, by appropriate Change Order Proposal, an adjustment in the Contract Amount if:
  - 11.11.1 the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Contract;
  - 11.11.2 there is no corresponding adjustment with respect to any other item of Work;
  - 11.11.3 if CONTRACTOR believes CONTRACTOR is entitled to an increase in the Contract Amount as a result of having incurred additional expense or OR believes that OWNER is entitled to a decrease in the Contract Amount.
- 11.12 If CONTRACTOR or OR cannot agree on terms of a Change Order Proposal as set forth in Article 11.11, CONTRACTOR and OR shall proceed in accordance with Articles 10.10, 10.11 or 10.12.

END OF ARTICLE

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## **ARTICLE 12 – CHANGE OF CONTRACT TIME**

### **12.1 *General***

All time limits stated in the Contract are of the essence of the Contract. The Contract Time and/or Milestones can only be changed by a Change Order.

### **12.2 *Non-Compensable Delays/Disruptions/Interferences/Hindrances/Accelerations***

CONTRACTOR and OWNER shall each be entitled to a non-compensable adjustment in the Milestones and/or Contract Time for any unreasonable delays, disruptions, interferences, hindrances, and/or accelerations in the Work due to any issues, events, conditions, circumstances and/or causes beyond their respective control, including but not restricted to, acts of god, acts of public enemy, acts of governmental entities, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather as defined in the Division 01 General Requirements, the discovery of any archeological findings, or acts or neglect of utility companies. In addition to whatever the law may define as non-compensable delays, disruptions, interferences, hindrances, and/or accelerations, the parties also define these force majeure type events, and all such similar events, whether referred to herein or not, as “non-compensable — excusable delays, disruptions, interferences, hindrances, and/or accelerations.” The sole remedy of CONTRACTOR and/or OWNER for such delays, disruptions, interferences, hindrances, and/or accelerations shall be an adjustment to the Milestones and/or Contract Time. Separate from the foregoing, CONTRACTOR and OWNER agree that an adjustment in the Milestones and/or Contract Time shall also be the sole remedy of each party for any mutually occurring and/or concurrent delays, disruptions, interferences, hindrances, and/or accelerations in the Work, even if such arise from causes, events, conditions, and/or circumstances within their respective control, provided that such delays, disruptions, interferences, hindrances, and/or accelerations are what is commonly referred to in the industry and at law as concurrent delays” or provided that such delays, disruptions, interferences, hindrances, and/or accelerations in fact occur concurrently during the Work, even if they arise from different causes, events, conditions, and/or circumstances, in whole or in part.

### **12.3 *OWNER Caused Compensable Delays/Disruptions/Interferences/Hindrances/Accelerations***

CONTRACTOR shall be entitled to additional compensation for any delays, disruptions, interferences, hindrances, and/or accelerations in the Work due to any issues, events, conditions, circumstances, and/or causes within the respective control of OWNER or created by third persons for whom the OWNER is responsible for, which were unforeseeable at the time of contracting and are unreasonable under the circumstances of the Project, provided that, CONTRACTOR complies with the notice provisions of this Contract. The parties acknowledge that damages arising from unreasonable and unforeseeable delays, disruptions, interferences, hindrances, and/or accelerations on a complex construction Project involve an enormous amount of factual information, are very expensive in terms of time and money to address and/or litigate, and irreparably deprive and detract from the time and attention required of the Project participants to successfully construct the Work. The parties acknowledge this is such a Project. Therefore, the parties establish the procedures set forth in Articles 12.4 through 12.6, and in Article 16, as the exclusive procedures for fully and finally resolving any and all damages to the CONTRACTOR, its Subcontractors and/or any persons who may claim under and/or through them, of every nature, type and kind, arising in whole or in part from such unreasonable and unforeseeable delays, disruptions, interferences, hindrances, and/or accelerations.

12.4 ***Initial Notice of Start of Issue, Event, Condition, Circumstance, and/or Cause of Perceived or Actual Delay/Disruption/Interference/Hindrance/Acceleration***

If CONTRACTOR and/or its Subcontractor, encounter any issue, event, condition, circumstance and/or cause of a perceived and/or actual delay, disruption, interference, hindrance, and/or acceleration to the Work, or any portion thereof, CONTRACTOR shall provide a written notice to OR. The notice shall be transmitted to OR upon the date of discovery or no later than three (3) days after first encountering the issue, event, condition, circumstance, and/or cause. The notice shall supply all the information required by the provided form. CONTRACTOR shall also raise the issue, event, condition, circumstance and/or cause of a perceived and for actual delay, disruption, interference, hindrance, and/or acceleration at the first Project meeting with OR following the date of discovery of the issue, event, condition, circumstance, and/or cause. The matter shall be carried in the meeting minutes until resolved.

12.5 ***Final Notice of End of Issue, Event, Condition, Circumstance, and/or Cause of Perceived or Actual Delay/Disruption/Interference/Hindrance/Acceleration***

Within three (3) days of the ending of the issue, event, condition, circumstance, and/or cause referred to in Article 12.4, CONTRACTOR shall provide written notice to OR, notifying OR of the date on which the issue, event, condition, circumstance, and/or cause ended. If CONTRACTOR fails to provide notice to OR then OR shall provide said notice to CONTRACTOR and CONTRACTOR shall provide all other information required by the form. If CONTRACTOR contends the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall proceed as required by Article 12.6.

***Change Order Proposal Seeking Adjustment of Contract Amount, Milestones and/or Contract Time Based Upon Compensable Delay/Disruption/Interference/Hindrance/Acceleration***

- 12.6 Within thirty five (35) days of a notice being issued by OR or CONTRACTOR pursuant to Article 12.5, if CONTRACTOR contends that the issue, event, condition, circumstance, and/or cause entitles CONTRACTOR to an adjustment of the Contract Amount, Milestones and/or Contract Time, then CONTRACTOR shall prepare and submit to ARCHITECT and OR, a Change Order Proposal pursuant to the requirements of Articles 10.7 through 10.12, inclusive, and Articles 11.3 through 11.7, inclusive, as applicable. The Change Order Proposal shall also identify all secondary and/or residual scopes of work/trades, if any, that will be or are likely to be impacted by the issue, event, condition, circumstance, and/or cause for which costs and/or time impacts could not be provided or estimated. Should CONTRACTOR identify such secondary and/or residual scopes of work/trades, CONTRACTOR shall state with specificity why and how, such scopes/trades, will, or are likely to be impacted and why CONTRACTOR cannot provide actual and or estimated cost and/or time impacts at the time the Change Order Proposal is submitted. Should CONTRACTOR fail or refuse to submit a Change Order Proposal as required by this Article 12.6 and/or fail or refuse to comply with the notice and other requirements of this Article 12, CONTRACTOR admits that it would be depriving OWNER of an opportunity to timely mitigate the issue, event, circumstance, condition and/or cause. As such, CONTRACTOR failure and/or refusal to follow the requirements of this Article 12 are an admission CONTRACTOR is not entitled to any adjustment in the Contract Amount, Milestones and/or Contract Time and CONTRACTOR has agreed to waive, relinquish and release any and all Claims in connection therewith.

12.7 Nothing in this Article 12 alters, impairs, precludes, changes or modifies, in any way, other OWNER rights to additional compensation expressly set forth elsewhere in the Contract Documents. Nothing in this Article 12 alters, impairs, precludes, changes or modifies, in any way, CONTRACTOR obligation to include all costs, both direct and indirect, into a Change Order Proposal and/or Change Order, pursuant to the Contract.

12.8 ***Contractor Caused Compensable Delay***

It is agreed by OWNER and CONTRACTOR that, because it would be impracticable and extremely difficult to fix the actual damages to the OWNER should the Work not be completed in accordance with the specified Milestones and/or Contract Time, plus any authorized adjustments to the Milestones and/or Contract Time, there shall be assessed as liquidated damages, not as a penalty, but rather an approximation of all such damages, the parties establish the sums shown in Section 01010 – Phasing of the Work, Appendix A as the amount of liquidated damages for each day thereafter the Work remains incomplete beyond the Milestones and/or Contract Time, plus any authorized adjustments. The OWNER shall have the right to assess liquidated damages against Contract funds, the CONTRACTOR, and/or the performance bond.

END OF ARTICLE

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## **ARTICLE 13 - TESTING AND INSPECTION; DEFECTIVE WORK**

### **13.1 *Notice of defective Work***

Although, OR, ARCHITECT, ARCHITECT Consultant or Inspectors have no obligation to discover or search for defective Work, if OR, ARCHITECT, ARCHITECT Consultant or Inspectors having jurisdiction acquire actual knowledge of any defective Work, the OR shall promptly notify the CONTRACTOR. Any or all defective Work may be rejected, corrected and/or accepted in accordance with the terms set forth in Articles 13 and 15.

### **13.2 *Access to the Work***

CONTRACTOR shall provide access at any time to the Work, products, equipment, materials and/or fabrications of the Work, wherever same are stored, fabricated, erected or installed, when directed to do so by OR, ARCHITECT, ARCHITECT Consultant, other OWNER personnel, representatives of testing and inspection agencies and other governmental entities having jurisdiction over the Work. CONTRACTOR shall provide sufficient, safe, proper access to, labor and facilities to prepare for and take samples for testing and/or inspection of products, equipment, and materials or fabrications of the Work.

### **13.3 *Inspector of Record***

Inspectors from government entities having jurisdiction over the Work and the OR shall have free access to any and all parts of the Work at any time. CONTRACTOR shall furnish Inspectors and OR such information and facilities as may be necessary to keep Inspectors and OR fully informed regarding progress, manner of Work and character of materials. Such observations shall not, in any way, relieve CONTRACTOR from responsibility for full compliance with all terms and conditions of the Contract Documents or be construed to lessen to any degree CONTRACTOR responsibility for providing efficient and capable superintendence of the Work. Inspectors are not authorized to make changes in the Contract Documents, including, without limitation, the Drawings or Specifications nor shall Inspectors inspection of the Work and methods relieve the CONTRACTOR of responsibility for the correction of subsequently discovered defects, or from its obligation to exactly comply with the Contract Documents. To the extent CONTRACTOR believes the Inspectors are requesting or requiring any such change, CONTRACTOR shall immediately provide notice to OR and ARCHITECT. OR review of percentage of the Work completed for the purpose of progress payments are stated for facilitating cash flow only and shall not constitute acceptance of the Work, in whole or in part, shall not be binding upon the OWNER in any way, and shall not be used as evidence of the actual percentage of the Work completed as per the requirements of the Contract Documents.

### ***Testing, Inspection and Observation of the Work***

13.4 Tests, inspections, observations and approvals of any portion of the Work required by the Contract Documents will comply with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5 Tests, inspections, observations and approvals conducted pursuant to the Contract Documents shall not serve as a basis for any CONTRACTOR Claim based on, but not limited to, delay, disruption, hindrance and/or acceleration of the Work.

- 13.6 CONTRACTOR shall provide a minimum of 2-day advance notice to Inspectors having jurisdiction of Work ready to be inspected, tested, observed and/or approved in order for Inspectors to perform or arrange performance thereof. CONTRACTOR shall fully cooperate with all testing and inspection personnel in the performance of their duties and responsibilities. CONTRACTOR shall provide a minimum of 2-day advance notice to OR of the supply, manufacture and/or fabrication of material to be supplied which must, by terms of the Contract Documents be tested, observed and/or inspected at the source of supply, fabrication or manufacture.
- 13.7 If the Contract Documents require observation, inspection, testing or approval of Work to be performed outside normal hours of Work, the costs thereof shall be borne by OWNER. If CONTRACTOR elects to perform Work outside normal hours of Work the costs of any required observation, inspection, testing or approvals performed outside normal hours of Work shall be borne by CONTRACTOR with such costs of observation, inspection, testing and approval being assessed against Contract funds, the CONTRACTOR, and/or the performance bond. CONTRACTOR shall provide a minimum of 2-day advance notice to OR if CONTRACTOR elects to perform Work outside normal hours of Work.
- 13.8 If OR, ARCHITECT, or any other public authority having jurisdiction over the Work, require or consider it necessary to perform additional observation, testing, inspection and/or approval, OR or ARCHITECT shall arrange for such additional observation, testing, inspection, or approval with the costs thereof being borne by OWNER, except for costs as set forth in Articles 13.11, 13.12.6 and 13.14.1 through 13.14.6 or as otherwise noted in the Contract Documents.
- 13.9 If initial observations, tests, inspections or approvals do not pass or receive approvals, CONTRACTOR shall be responsible for all costs including the costs of additional observations, tests, inspections or approval, including, but not limited to, additional professional services and consultants provided by OWNER with the costs of such observation, tests, inspections and approval being assessed against Contract funds, the CONTRACTOR, and/or the performance bond.
- 13.10 CONTRACTOR shall not incorporate any material, product, assembly or fabrication requiring observation, testing, inspection and/or approval into the Work until such test results, observation or inspection reports denoting compliance with applicable provisions of the Contract Documents are provided to CONTRACTOR.
- 13.11 If observations, tests, inspections or approvals do not pass or receive approval, CONTRACTOR shall be responsible for all delays in the Milestones and/or Contract Time as set forth in Article 12.8.

***OWNER Consultants***

- 13.12 If required by the terms and conditions of the Contract Documents, OWNER will furnish at OWNER expense, professional consultants such as, but not limited to, geotechnical engineers or other consultants who shall provide observations, tests, inspections and approvals identified in the Contract Documents as being responsibility of OWNER except:
- 13.12.1 when such services and expenses thereof are stipulated by the Contract Documents to be provided by CONTRACTOR;
- 13.12.2 when a observed, tested, inspected or approved material, product, fabrication or assembly fails to meet the requirements of the Contract Documents;

- 13.12.3 when the source or supplier of material is changed after original observation, test or inspection has been approved or passed;
  - 13.12.4 when, upon examination of the ARCHITECT, any material, product, fabrication or assembly appears to be inferior to and/or different from the originally observed, tested, inspected or approved material, product, fabrication or assembly;
  - 13.12.5 when specified observations, testing, inspection and approval costs associated with CONTRACTOR provided materials, products, fabrications or assemblies are outside a sixty (60) mile radius of the Project site;
  - 13.12.6 then such costs of observation, testing, inspection, and approvals shall be assessed against Contract funds, the CONTRACTOR, and/or the performance bond.
- 13.13 OWNER Consultant shall report results of all observations and tests noting if tested and/or observed materials passed or failed such tests and shall furnish copies to OR, ARCHITECT, CONTRACTOR and others as required. In the case of geotechnical engineers the report shall state such observations and tests were conducted under the responsible charge of a licensed State of Georgia civil engineer and the material was tested in accordance with applicable provisions of the Contract Documents.

***Testing Laboratories and Test Reports***

- 13.14 If required by the terms and conditions of the Contract Documents, OWNER will furnish at OWNER expense professional services of an independent approved testing laboratory to conduct required tests and inspections identified in the Contract Documents as being responsibility of OWNER except:
- 13.14.1 when such services and expenses thereof are stipulated by the Contract Documents to be provided by CONTRACTOR;
  - 13.14.2 when a tested and/or inspected material, product, fabrication or assembly fails to meet the requirements of the Contract Documents;
  - 13.14.3 when the source or supplier of material is changed after original observation, test or inspection has been approved or passed;
  - 13.14.4 when, upon examination of the ARCHITECT, any material, product, fabrication or assembly appears to be inferior to and/or different from the originally observed, tested, inspected or approved material, product, fabrication or assembly;
  - 13.14.5 when the specified observations, testing, inspection and approval costs associated with CONTRACTOR provided materials, products, fabrications or assemblies are outside a sixty (60) mile radius of the Project site;
  - 13.14.6 then such costs of observation, testing, inspection and approvals shall be assessed against Contract funds, the CONTRACTOR, and/or the performance bond.

- 13.15 Independent testing laboratory shall report results of all tests noting if inspection and/or tested material passed or failed such tests and shall furnish copies to OR, ARCHITECT, CONTRACTOR and others as required. Report shall state tests were conducted under the responsible charge of a licensed State of Georgia civil engineer and the material was tested in accordance with applicable provisions of the Contract Documents.

***Uncovering the Work***

- 13.16 If any portion of the Work is covered prior to any required observation, inspection, testing or approval it shall, upon notice to CONTRACTOR by OR, be uncovered for observation, inspection, testing or approval with the costs of uncovering and replacement thereof being borne by CONTRACTOR.
- 13.17 If ARCHITECT or OR deems it necessary to uncover any portion of the Work for additional observation, inspection, testing or approval, CONTRACTOR shall, upon receipt of OR directive, proceed with furnishing such labor, material and equipment to uncover such portion of the Work and shall proceed as follows:
- 13.17.1 if uncovered Work is deemed to be defective, CONTRACTOR shall proceed in accordance with, but not limited to, Articles 13.18 through 13.21;
- 13.17.2 if uncovered Work is deemed to be in complete accordance with the Contract Documents, CONTRACTOR may be allowed an adjustment in the Contract Amount for those specific costs directly related to the costs of uncovering, repair and replacement of Work, and OR may adjust the Milestones and/or Contract Time;
- 13.17.3 however, if CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

***Remedying Defective Work***

- 13.18 Any Work, materials, equipment or other items, which do not conform to the requirements, standards or approvals as set forth in the Contract Documents may be deemed defective by OR, in which case, they shall be removed and replaced by CONTRACTOR upon notice from OR.
- 13.19 CONTRACTOR shall, upon receipt of OR notice, promptly correct any portion of the Work deemed defective, whether observed before or after completion and whether or not fabricated, installed, or completed. CONTRACTOR shall be responsible for all delays to the Milestones and/or Contract Time, costs of correcting defective Work, including the Work of others, including, but not limited to, additional professional services and consultants provided by OWNER with the costs of such observations, tests, inspections, and approvals being assessed against Contract funds, the CONTRACTOR, and/or the performance bond.
- 13.20 CONTRACTOR shall remove from the Project site all portions of defective Work not corrected by CONTRACTOR or accepted by OR.

- 13.21 If CONTRACTOR fails to remedy any defective Work, OR may proceed as set forth in Article 15.5.

***Correction Period for the Work***

- 13.22 If, within one (1) year after the date of Substantial Completion or such longer periods of time prescribed by any special guarantees or warranties established under the Contract Documents and/or by any specific provisions of the Contract Documents, any Work is found to be defective, CONTRACTOR shall, in accordance with OWNER written notice and directives; correct defective Work; or replace defective Work with Work which is not defective; and correct and/or replace damage to other Work resulting from correction and/or replacement of defective Work.

- 13.23 In the event OR accepts a particular item of equipment and places it into continuous service prior to Substantial Completion of the Work, the correction period for such item may commence from such date of OR acceptance if such acceptance is provided for in Article 14.18.

- 13.24 Where such defective Work has been corrected and/or replaced pursuant to Article 13.22 the correction period for such corrected and/or replaced Work shall be extended an additional term equal to the original correction period for the Work.

- 13.25 Nothing contained in Articles 13.22, 13.23, and 13.24 shall be construed to establish a period of limitation with respect to other CONTRACTOR obligations under the Contract Documents. Establishment of the one (1) year time period only relates to the specific obligation of CONTRACTOR to correct defective Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish CONTRACTOR liability with respect to CONTRACTOR obligations other than to correct any defective portion of the Work.

13.26 ***OWNER Acceptance of defective Work***

Prior to ARCHITECT recommendation for final payment, OR may, in lieu of requiring correction and/or replacement of defective Work and where code, statute, ordinance or law does not require such correction, prefer to accept defective Work and may do so. CONTRACTOR shall pay all claims, costs, professional services, tests, inspections, losses, and damages incurred by OWNER in the evaluation of and determination of the acceptability of defective Work. If CONTRACTOR proposes acceptance of defective Work prior to ARCHITECT recommendation of final payment, a Construction Directive shall be issued. CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

END OF ARTICLE

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## ARTICLE 14 - CONTRACTOR PAYMENTS AND COMPLETION

### 14.1 *Schedule of Values*

The certified Schedule of Values, as established in Article 2.5.1, shall serve as the basis for progress payments and shall be incorporated into a certified Application for Payment form available from the OWNER.

### *Application for Payment*

14.2 On or before the fifth (5th) day of each calendar month following the month for which payment is being requested, but not more than once a month, CONTRACTOR shall submit to OR an itemized Application for Payment for Work completed during the preceding month in accordance with the Contract Documents. Such application shall be certified by CONTRACTOR under penalty of perjury and shall be supported by the following or such portion thereof as OR requires:

- 14.2.1 the amount paid to the date of the application to CONTRACTOR, to all its Subcontractors, and all others furnishing labor, material, or equipment;
- 14.2.2 the amount being requested with the Application for Payment by CONTRACTOR on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment up to and including the last day of the preceding month;
- 14.2.3 the balance due to each of such entities after said payment is made;
- 14.2.4 a certification the project record documents are current;
- 14.2.5 the approved Change Orders to the Contract Amount, Milestones and/or Contract Time;
- 14.2.6 in accordance with Articles 14.9 and 14.10 a summary of the retention withheld;
- 14.2.7 material invoices, evidence of equipment purchases, rentals, and other supporting documentation and details of cost as OR may require from time to time;
- 14.2.8 the percentage of completion of the Work by line item referenced to the certified Schedule of Values;
- 14.2.9 a statement showing all payments made by CONTRACTOR for labor and materials on account of the Work covered in the preceding certified Application for Payment;
- 14.2.10 prior to CONTRACTOR receipt of any payment for monies due, as a result of a percentage of the Work completed, it shall furnish OR with a summary which must show payments to be made to Subcontractors covered by the payment application;
- 14.2.11 signed and notarized Unconditional Waiver and Release of Lien for partial and final payments on form from OWNER.

- 14.3 If CONTRACTOR fails to comply with any one of the certified Application for Payment requirements as set forth in Article 14.2, OWNER has no obligation whatsoever to make any payment, each of the Article 14.2 requirements, as well as performing the Work as per the Contract, being conditions precedent to the maturing of OWNER obligation to make payment under the Contract. A certified Application for Payment is not “properly submitted”, within the meaning of this Contract unless and until CONTRACTOR has met each and every one of the requirements set forth in Article 14.2.
- 14.4 At CONTRACTOR sole cost and expense, OWNER will also permit the substitution of securities in lieu of retention withheld by OWNER to ensure performance under the Contract. At the request and expense of CONTRACTOR, securities equivalent to the amount otherwise to be withheld under the Contract shall be deposited with OWNER, or with a state or federally chartered bank as the escrow agent. If the securities are so deposited, then retention on progress payments will not be withheld. In accordance with the provisions of Article 14.21 the securities shall be returned to the CONTRACTOR. Securities eligible for investment, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by CONTRACTOR and OWNER. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Article 14.4 shall be approved by the OWNER. The escrow agreement shall provide “in the event OWNER declares a material breach of the Contract and gives notice thereof in writing to CONTRACTOR and the escrow agent, the escrow agent shall immediately release to OWNER funds and/or securities in an amount necessary to permit OWNER to correct defective Work and/or complete the Work.”
- 14.5 Since CONTRACTOR is required to order, obtain, and store materials and equipment sufficiently in advance of the Work at no additional cost or advance payment from OWNER, and to assure there will be no delays to the progress of the Work, payment by OWNER for stored material shall be made where OR specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Project site or at some other location agreed upon in writing by OR, the certified Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting OWNER has received the materials and equipment free and clear of all liens and encumbrances and the materials and equipment are covered by appropriate insurance and/or other arrangements to protect OWNER interests therein, including, without limitation, transportation to the Project site. All stored items shall be stored in a bonded warehouse, inventoried, and if applicable, specified by identification numbers, otherwise all risk of loss remains with CONTRACTOR.
- 14.6 ***CONTRACTOR Warranty of Title***

CONTRACTOR warrants and guarantees title to all Work, materials and equipment covered by any certified Application for Payment, whether incorporated into the Work or not, will pass to OWNER no later than the time of payment free and clear of stop notices and any and all encumbrances. CONTRACTOR further warrants upon submittal of a certified Application for Payment all Work for which a certified Application for Payment has been previously issued and payments received from OWNER shall, to the best of CONTRACTOR knowledge, information, and belief, be free and clear of stop notices and any and all encumbrances in favor of CONTRACTOR, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Nothing set forth in this paragraph shall be construed to commence any warranty period for materials, equipment, systems, etc.

incorporated into the Work. OWNER expressly reserves the right to reject any or all of the Work not in compliance with the Contract Documents at any time before Final Completion.

***Review of Payment Applications***

- 14.7 Based on ARCHITECT observations and CONTRACTOR certified Application for Payment, ARCHITECT will review and make recommendations to OR regarding the amounts payable to CONTRACTOR on the certified Application for Payment.
- 14.8 ARCHITECT shall, within five (5) days after receipt of the certified Application for Payment, either recommend approval of said payment in writing to OR or notify OR in writing of the reasons for recommending withholding approval in whole or in part. OR receipt of ARCHITECT recommendation shall constitute OWNER receipt of CONTRACTOR certified Application for Payment for payment purposes.
- 14.9 If the certified Application for Payment is undisputed and properly submitted as per Articles 14.2 and 14.3, payment, less ten percent (10%) retainage and any OWNER assessments, will be made within thirty (30) days from receipt as defined in Article 14.8. If however, the certified Application for Payment is not properly submitted, and/or is otherwise disputed, the OR will return it within seven (7) days from receipt of ARCHITECT recommendation with a written statement setting forth the reason why the payment request is not proper. If the payment request is properly submitted as required under Articles 14.2, 14.3 and 14.8, and only a portion thereof is disputed, OWNER may pay the undisputed portion thereof and refuse to pay the disputed portion thereof until the dispute is resolved. All payments are made "In trust" and OR shall have the right to subsequently correct any error made in any certified Application for Payment. If CONTRACTOR disputes any OWNER assessment, then CONTRACTOR shall file a Claim as set forth in Article 16.
- 14.10 At any time after fifty percent (50%) of the value of the Contract Amount has been completed, CONTRACTOR can request, and OWNER may, by action of the OWNER governing Board, determine satisfactory progress of the Work and OWNER may make any of the remaining payments in full for actual Work completed or may withhold retainage in any amount up to ten percent (10%) as OWNER determines appropriate based on progress of the Work. CONTRACTOR can file a written request for a reduction in retainage accompanied by a notarized consent of surety to reduction in or partial release of retainage form.
- 14.11 ARCHITECT recommendation of any payment in a certified Application for Payment merely constitutes a representation by ARCHITECT to OR based on ARCHITECT observations at the Project site of executed Work and the data comprising the Application for Payment and to the best of ARCHITECT knowledge, information, and belief that:
- 14.11.1 Work has progressed to the points indicated in the certified Application for Payment;
- 14.11.2 quality of the Work is in general compliance with the Contract Documents.
- 14.12 However, the review and recommendation of payment will not be a representation ARCHITECT has made exhaustive or continuous on site Project inspections to check the quality or quantity of the Work or the Work is in fact as per the Contract Documents; reviewed construction means, methods, techniques, sequences, or procedures of CONTRACTOR; reviewed CONTRACTOR requisitions received from Subcontractors, material and equipment suppliers, and other data requested by OR to substantiate

CONTRACTOR right to payment; or made an examination to ascertain how or for what purpose CONTRACTOR has used monies previously paid on account of the Contract Amount.

- 14.13 OR may refuse to make ARCHITECT recommended payments in whole or part because of:
- 14.13.1 defective Work not remedied or completed Work has been damaged requiring correction;
  - 14.13.2 the Contract Amount has been reduced by Change Order;
  - 14.13.3 OWNER has been required to correct defective Work and/or to complete Work in accordance with Articles 13.22 and/or 15.5;
  - 14.13.4 stop notices filed;
  - 14.13.5 liquidated damages assessed against CONTRACTOR;
  - 14.13.6 reasonable OR doubt the Work can be completed for the unpaid balance of any Contract Amount and/or within the Milestones and/or Contract Time;
  - 14.13.7 damage to OWNER and/or Separate Work Contract;
  - 14.13.8 failure to store and/or properly secure materials;
  - 14.13.9 failure of CONTRACTOR to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, Construction Schedules, Shop Drawings, submittal schedules, Schedule of Values, Product Data and Samples, proposed material lists, and/or verified reports;
  - 14.13.10 failure of CONTRACTOR to maintain current and accurate project record documents;
  - 14.13.11 erroneous estimates by CONTRACTOR of the value of the Work performed and/or other erroneous data in a certified Application for Payment;
  - 14.13.12 unauthorized deviations from the Contract Documents including, without limitation, CONTRACTOR failure to correct notices of defective Work and/or safety orders;
  - 14.13.13 failure of CONTRACTOR and/or its eligible Subcontractors to comply and remain in compliance with insurance requirements;
  - 14.13.14 other items entitling OWNER to a partial and/or full withholding of the recommended amounts;
  - 14.13.15 OWNER exercising any of its rights as set forth in Articles 15.2 through 15.5 inclusive;

14.13.16 OWNER has assessed other costs, expenses and/or damages as permitted by the Contract;

14.13.17 OWNER has assessed penalties as permitted by law. No interest or penalties shall be paid on any retention or amounts withheld due to the failure of CONTRACTOR to perform in full accordance with the terms and conditions of the Contract Documents.

14.14 ***Payment Not Constituting Approval or Acceptance***

An approved certified Application for Payment, a progress payment, or partial or entire use or occupancy of the Work by the OWNER shall not constitute acceptance of Work that is not performed in accordance with the Contract Documents.

14.15 ***Interest***

If payment is not made within thirty (30) days of receipt of an undisputed and properly submitted certified Application for Payment as set forth in Articles 14.2, 14.3 and 14.8, then interest shall begin to accrue as of the thirty-first (31st) day until paid at the rate of eight percent (8%). However, under no circumstances shall interest apply on a certified Application for Payment or sums claimed due under the terms of the Contract where the payment(s) is/are reasonably disputed by OWNER or CONTRACTOR.

***Substantial Completion***

14.16 When CONTRACTOR considers the Work is complete and ready for the use intended, CONTRACTOR shall request OR to issue a certificate of Substantial Completion. Within a reasonable time, OR, ARCHITECT and CONTRACTOR shall inspect the Work. If OR does not consider the Work substantially complete, OR will notify CONTRACTOR stating the reasons thereof. If OR considers the Work to be substantially complete, ARCHITECT shall prepare and submit to OR and CONTRACTOR a comprehensive punch list of items to be completed. Upon receipt, OR shall prepare and deliver to OWNER a certificate of Substantial Completion thereby establishing the date of Substantial Completion, division of responsibilities pending final payment between OWNER and CONTRACTOR in respect to security, maintenance, safety, operation, heat, utilities, damage to the Work and insurance, warranties and guarantees and establish the date by which CONTRACTOR shall finish all items on the attached punch list. Warranties and guarantees shall commence on the date of Substantial Completion, unless otherwise provided in the certificate of Substantial Completion. CONTRACTOR shall promptly proceed in completing and correcting all items on the punch list in accordance with the Detailed Construction Schedule and prior to Final Completion. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents.

14.17 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the punch list.

14.18 ***Partial Use or Occupancy***

OWNER may occupy or use any completed or partially completed portion of the Work with such Partial Use or Occupancy not constituting acceptance of the Work or a portion thereof. Upon OWNER election to partially use and/or occupy the Work, OR shall provide notice to CONTRACTOR, ARCHITECT and OR who shall jointly inspect the area to be partially

used and/or occupied in order to determine and record the status of completion. ARCHITECT shall prepare and distribute a tentative punch list to CONTRACTOR and OR. OR and CONTRACTOR may also agree in writing to the division of responsibilities pending issuance of a Certificate of Substantial Completion in regards to security, maintenance, operation, heat, utilities, damage to the Work, insurance, warranties and guarantees.

14.19 ***Final Inspection***

Upon notice from CONTRACTOR the Work is complete, OR, ARCHITECT and CONTRACTOR will perform a final inspection and will notify CONTRACTOR of all outstanding items in which said inspection reveals the Work to be incomplete and/or defective. CONTRACTOR shall immediately take all measures to correct and/or remedy said deficiencies.

14.20 ***Final Payment Application***

After CONTRACTOR has completed all corrections to the satisfaction of OR, CONTRACTOR may make a final Application for Payment which shall be accompanied by the same details as set forth in Article 14.2 in addition to the following items as conditions precedent to final payment:

- 14.20.1 a full and final waiver and release of lien or other similar notices in connection with the Work shall be submitted by CONTRACTOR, including a release of stop notice in a recordable form, together with, to the extent permitted by law, any stop notice release bonds from a surety acceptable to OWNER as defined by the Contract Documents, in connection with the Work obtained by CONTRACTOR from each stop notice claimant. The waivers of stop notice shall be in a form as approved by OWNER;
- 14.20.2 CONTRACTOR shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and/ordinances including but not limited to the filing of any final verified reports, or to fulfill any of the orders or directives of OR required under the Contract;
- 14.20.3 each Subcontractor and CONTRACTOR shall have delivered to OR all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work;
- 14.20.4 CONTRACTOR shall have delivered to OR reproducible final project record documents denoting "as built" Work with CONTRACTOR certification of the accuracy of the project record documents, all guarantees and warranties, bonds, operation and maintenance instructions for equipment, products, apparatus;
- 14.20.5 CONTRACTOR shall have delivered to OR all manuals and extra materials required by the Contract Documents;

- 14.20.6 CONTRACTOR shall have removed, or caused to be removed, all waste materials and rubbish from and about the Project site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, temporary facilities, and any other similar materials or equipment of CONTRACTOR or any Subcontractor;
- 14.20.7 CONTRACTOR shall have provided all training and OWNER orientations as specified in the Contract Documents;
- 14.20.8 consent of CONTRACTOR surety company to final payment has been received by OR;
- 14.20.9 all waivers and releases required by Georgia law and the Contract are provided to OR to be held in trust from all Subcontractors and CONTRACTOR;
- 14.20.10 all releases from Subcontractors are provided by CONTRACTOR to OR, then, and only then;
- 14.20.11 shall the Work be deemed to have attained Final Completion.

***Final Payment and Notice of Completion***

- 14.21 Upon receipt and approval of all of the items specified in conjunction with the final Application for Payment, as set forth in Article 14.20, ARCHITECT shall issue a final Certificate of Payment, stating to the best of its knowledge, information, and belief, and on the basis of its observations and all other data accumulated or received by ARCHITECT in connection with the Work, the Work has been completed in accordance with the Contract Documents. ARCHITECT shall present the final Application for Payment to OR. OWNER shall have no obligation to make, and shall not make, final payment of any outstanding disputed Claims not resolved by the dispute resolution procedures of Article 16.
- 14.22 Sixty (60) days after OR records the Notice of Completion, the retention shall be paid, except for one hundred fifty percent (150%) of any amount in dispute and/or which OWNER otherwise has a right to withhold.
- 14.23 CONTRACTOR hereby expressly agrees, pursuant to O.C.G.A. § 13-11-7(b), that the payment provisions within this Article 14 shall supersede the rates of interest, payment periods and contract and subcontract terms provided for by the Georgia Prompt Payment Act, O.C.G.A. § 13-11-1 *et seq.*, and that the rates of interest, payment periods and contract and subcontract terms provided form under the Prompt Payment Act shall have no application to this contract.

END OF ARTICLE

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## **ARTICLE 15 - WORK SUSPENSION AND TERMINATION**

### **15.1 *OWNER Right to Suspend Work***

The Work may be suspended for such period of time as may be necessary or convenient for OWNER upon OR notice to CONTRACTOR. Upon receipt of a directive to suspend Work, CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize all costs allocable to the Work covered by the directive during the suspension. Where performance of the Work is suspended for an unreasonable time under the circumstances and which was not contemplated by the parties, and is a result of action or failure to act by OWNER, an adjustment may be made in the Contract Amount, Milestones and/or Contract Time, exclusive of fee, necessarily caused by such suspension. No adjustment shall be made for a suspension resulting from any cause other than action or inaction by OWNER. If CONTRACTOR believes a Construction Directive establishes a basis for an adjustment in the Contract Amount, Milestones and/or Contract Time, CONTRACTOR shall, pursuant to Articles 10.7 through 10.12, submit a Change Order Proposal within ten (10) days of the date of issuance of the Construction Directive.

### ***OWNER Termination for Convenience***

15.2 OWNER may, whenever its interests require, terminate this Contract for the convenience of OWNER upon OR notice to CONTRACTOR indicating the date upon which such termination is effective. Upon receipt of such notice, CONTRACTOR shall cease Work as directed and incur no further obligations with regard to the terminated Work.

15.3 Upon termination of the Contract for convenience of OWNER, CONTRACTOR shall transfer title and deliver to OWNER in the manner required by OR all parts fabricated or not, portions of the Work in process, completed portions of the Work, supplies and other materials produced or acquired for the terminated Work, completed or partially completed plans, drawings, information and other property which would be required to be furnished to OR upon Final Completion. CONTRACTOR shall protect and preserve property in its possession in which OWNER has an interest. If OR does not request transfer and delivery of such property, CONTRACTOR shall use its best efforts to sell such supplies and material for exclusive benefit of OWNER.

15.4 Upon termination of the Contract for the convenience of the OWNER, CONTRACTOR shall be paid:

15.4.1 for completed and acceptable Work performed in accordance with the Contract Documents prior to the effective date of termination, including overhead and profit on such Work;

15.4.2 storage, transportation and other costs reasonably necessary for the preservation or disposition of the Work and/or inventory described in Article 15.3;

15.4.3 compensation under Articles 15.4.1 and 15.4.2 shall be the exclusive and only compensation CONTRACTOR is entitled to if OWNER exercises its rights under Article 15.2. Further, there shall be no payment for Work not completed pursuant to the Contract or for CONTRACTOR and/or Subcontractor expected overhead and profit had the Work and/or Project not been terminated;

- 15.4.4 any outstanding Claims as of the date of termination shall be resolved pursuant to Section 16;
- 15.4.5 amounts required to be withheld for stop notices shall not be paid until the stop notice issues are resolved.

**15.5 *Insufficient Performance by CONTRACTOR - OWNER Options***

If, in the opinion of OR, CONTRACTOR at any time during the progress of the Work:

- 15.5.1 fails to immediately correct or remedy any defective Work;
- 15.5.2 refuses, fails or neglects to supply a sufficiency of material, labor, equipment, or the like;
- 15.5.3 fails to promptly pay Subcontractors;
- 15.5.4 fails to keep in full force and effect the payment and performance bonds required by the Contract for as long as those bonds are required to remain in effect by law and/or the Contract;
- 15.5.5 fails to keep the Contract funds free and clear of all stop notices;
- 15.5.6 fails to comply with a Construction Directive or notice of correction;
- 15.5.7 fails to keep to the Detailed Construction Schedule;
- 15.5.8 fails to maintain insurance;
- 15.5.9 fails to correct and complete punch list Work;
- 15.5.10 fails to adhere to any provision of this Contract, including safety requirements;

then OR shall give notice as required by Article 15.5.11 or Article 15.5.12, as applicable.

***Safety Violations***

- 15.5.11 in cases of safety violation (s), OWNER may correct the violation(s) in accordance with Articles 15.5.15 and/or 15.5.16 without giving prior written notice, so long as oral notice is given to CONTRACTOR and its performance bond surety, and the CONTRACTOR fails to act immediately to correct the safety violations. The oral notice will be followed, as soon as possible, by a written notice from OR to CONTRACTOR and performance bond surety.

***Non-Safety Violations***

- 15.5.12 In cases other than violation(s) of safety requirements, before OWNER can proceed under Articles 15.5.15 and/or 15.5.16, OR shall first send a written notice to CONTRACTOR and its performance bond surety, at the addresses listed in the Contract, by facsimile, regular mail and/or electronic mail, giving CONTRACTOR and/or the performance bond surety three (3) days to correct the

deficiencies to OR satisfaction. In the event CONTRACTOR and/or its performance bond surety fail to commence correction within the seven (7) days, OWNER can proceed forthwith, without any further notice, pursuant to Articles 15.5.15 and/or 15.5.16.

***OWNER Options***

OWNER may, at its sole option and without prejudice to any other rights and/or remedies OWNER may have at law, under the Contract, and/or in equity, do any and/or all of the following:

- 15.5.13 after providing further notice as required by law, initiate procedures to revoke any pre-qualification status CONTRACTOR may have with OWNER;
- 15.5.14 after providing further notice as required by law, initiate procedures to have CONTRACTOR declared a non-responsive Offeror and banned from all current and/or future OWNER Projects for a period of two (2) to five (5) years;
- 15.5.15 make good such deficiencies (i.e., Articles 15.5.1 through 15.5.10, inclusive) by whatever method OWNER deems most expedient with all costs and expenses thereof being deducted and/or drawn down from the Contract Amount;
- 15.5.16 terminate CONTRACTOR right to proceed with the Work of the Contract, in whole or in part, without terminating CONTRACTOR obligations under the Contract, with OWNER then completing the Work of the Contract, in whole or in part, by whatever method OWNER deems most expedient with all costs and expenses thereof being deducted and/or drawn down from the Contract Amount.

***OWNER Use of CONTRACTOR Equipment, Facilities, Orders, Etc.***

- 15.5.17 If OWNER elects to correct, remedy and/or complete Work, in whole or in part, as a result of electing the options provided for in Articles 15.5.15 and/or 15.5.16, then OWNER may: take possession of all or a portion of the Work; take possession of CONTRACTOR facilities, supplies, tools, equipment, appliances, apparatus, and machinery at the Work and/or Project site, whether owned, leased or rented by CONTRACTOR; incorporate into the Work all materials and equipment stored at the Project site, on order and/or stored elsewhere; proceed in accordance with, but not limited to, Articles 6.22 and 6.60.
- 15.5.18 With respect to the options in Articles 15.5.15 and/or 15.5.16, if the funds otherwise due and payable to the CONTRACTOR under the Contract are not sufficient to reimburse OWNER for all incurred costs and expenses, then CONTRACTOR and its performance bond surety shall be responsible therefore. OWNER shall pursue recovery of all such costs, expenses and/or damages in litigation. Such costs, expenses and/or damages are not subject to the provisions of Article 16. If the cost to correct or complete under Articles 15.5.15 and/or 15.5.16 does not exceed the Contract Amount, then any amount remaining in the Contract Amount shall be paid over to the CONTRACTOR, provided that such remaining amount is otherwise due and payable to CONTRACTOR.
- 15.5.19 CONTRACTOR shall not be allowed an adjustment in the Milestones and/or

Contract Time because of any delays or disruptions in the performance of the Work which are attributable to the exercise of OWNER rights and remedies as set forth in this Article 15.5. To the extent CONTRACTOR contends OWNER has improperly invoked its options under Articles 15.5.15 and/or 15.5.16, CONTRACTOR shall file a Claim under Article 16. OWNER exercise of its rights under Articles 15.5.13 and/or 15.5.14 are not subject to the provisions of Article 16.

END OF ARTICLE

## ARTICLE 16 - CLAIMS AND MANDATORY DISPUTE RESOLUTION

### *Disputes and Claims General*

- 16.1 The mandatory dispute resolution procedures set forth in this Article 16 shall not usurp OWNER authority to determine what Work is constructed, will be constructed, or whether the Work complies with the Contract Documents (notwithstanding the above, a determination by OWNER with regards to whether the Work complies with the Contract Documents shall give rise to a Dispute or Claim by CONTRACTOR). A "Dispute" or "Claim" is a demand or assertion by one of the parties seeking adjustments to the Contract Amount, Milestones and/or Contract Time. Every Dispute or Claim shall be in writing and signed under penalty of perjury and stated with specificity. The Dispute or Claim shall identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute/Claim, the dates thereof, and the asserted effects on the Contract Amount, Milestones and/or the Contract Time. The Dispute/Claim shall include and be accompanied by all supporting data to substantiate the claim. A Dispute/Claim asserting an effect on the Milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impacts on the critical paths, Milestones and/or Contract Time. A detailed cost breakdown of items allowed under the Contract shall accompany any Dispute/Claim asserting an effect on the Contract Amount. In accordance with Article 10.7 through 10.12, OR shall serve as the initial dispute resolution decision maker on all Disputes regarding the Work, Project, the Contract Documents and all matters pertaining thereto and/or caused thereby, excepting only those issues regarding stop notices, penalties, and other matters excluded in Article 16.2.
- 16.2 The term Dispute/Claim, for purposes of the Contract's mandatory dispute resolution procedures, shall not apply to:
- 16.2.1 the rights and obligations OWNER has as a public entity, such as, but without limitation, the revocation of pre-qualification status, barring a Offeror from OWNER Contracts, governmental immunity and, without limitation, the imposition of penalties or forfeitures prescribed by statute or regulation and imposed by a governmental body upon a CONTRACTOR;
  - 16.2.2 personal injury, wrongful death or property damage claims;
  - 16.2.3 latent defect or breach of warranty or guarantee to repair;
  - 16.2.4 stop notices;
  - 16.2.5 OWNER rights as set forth in Articles 15.5.13 and 15.5.14;
  - 16.2.6 OWNER rights to recover all costs, expenses and/or damages as set forth in Articles 15.5.15 and 15.5.16.

### *Mandatory Dispute Resolution Process*

- 16.3 In accordance with Article 10.7 through 10.12 should a dispute arise, the CONTRACTOR shall request the OR to have the disputed amount reviewed by senior management. The request for senior management review must be made within seven (7) days of the rejection of the proposed adjustments by the OR. Within five (5) days of the CONTRACTOR'S request, the OR will coordinate a review meeting between the CONTRACTOR and senior management. If the senior management review resolves the

dispute, a change order will be issued by the OR accordingly. If the dispute is not resolved at the senior management review, the CONTRACTOR must notify the OR that it protests the decision and shall proceed with the following mandatory dispute resolution process.

- 16.4 Within ten (10) days of the date stated on a written objection under Article 16.3, any party can send and/or personally deliver to the authorized representative of the other party a written Meet and Confer demand. The CONTRACTOR shall file the Meet and Confer demand with the Fulton County Schools Capital Program Contracts Department (FCCPCD). The FCCPCD will coordinate and facilitate the meet and confer meeting with the CONTRACTOR. CONTRACTOR shall be represented at the Meet and Confer meeting by a senior project manager and a person of higher management level who has full authority to instantly resolve the dispute. The parties shall meet and negotiate a good-faith resolution of the dispute. All dispute resolutions are subject to the approval of the governing Board, whether by change order or settlement agreement. If the Meet and Confer meeting does not take place and/or resolve the dispute within ten (10) days from the delivery of the Meet and Confer demand, the party asserting the dispute shall then have the option to go to a Neutral Master procedure set forth in Article 16.5 (in which case the other party must participate in such Neutral Master procedures) or to immediately proceed to follow Article 16.6. The parties agree that resolving all disputes as soon as possible or no later than thirty (30) days after the filing of the dispute is in both of their best interests and provide one another with a critical opportunity to mitigate damages, if any. The parties agree that such resolutions are so critical that if a party fails to follow any part of the mandatory dispute resolution process established by articles 16.3 through 16.5, that the party's dispute is waived, released, and forever forfeited.
- 16.5 Disputes not resolved through the Meet and Confer process will be submitted to a Neutral Master for further review, in an attempt to resolve the dispute. Both parties agree to select a mutually agreeable Neutral Master to hear the dispute. The Neutral Master shall, upon receipt of notice of dispute resolution request, schedule a hearing with all parties present. Both parties agree to attend the hearing with the intent being to resolve the dispute. The fees of the Neutral Master and the administrative costs of the hearing shall be shared equally between the parties. Both parties will submit all pertinent information regarding the dispute to the Neutral Master. The Neutral Master shall have 7 days to review the information submitted and shall schedule resolution meeting with all parties to the dispute. The meeting shall be held within 14 days after the Neutral Master has been selected. Every effort shall be made by both parties to resolve the issue at the Neutral Master meeting. The Neutral Master meeting shall be scheduled for one eight (8) hour day. If the dispute remains after the Neutral Master meeting then both parties will proceed in accordance with Article 16.6.

#### ***Claim Process/Litigation***

- 16.6 If the dispute resolution proceedings, set forth in Articles 16.3 through 16.5, have been completed and a dispute is still unresolved, then (and only then) shall the Contractor or OWNER file a lawsuit with the Superior Court of Fulton County. However, in no event can the lawsuit be filed before Final Completion.

16.7 All claims, disputes and complaints filed pursuant to Articles 16 shall be addressed to:

Fulton County Board of Education  
Robert M. Avossa, Ed.D, Superintendent  
c/o Fulton County Schools  
786 Cleveland Avenue, SW  
Atlanta, Georgia 30315

Required copies to:

D. Glenn Brock, Esq.  
Brock, Clay Calhoun & Rogers, P.C.  
49 Atlanta Street  
Marietta, GA 30060

Capital Program Contracts Department  
The Meadows Operations Center  
5270 Northfield Boulevard  
College Park, Georgia 30349

END OF ARTICLE

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## **ARTICLE 17 – ADDITIONAL PROVISIONS**

### **17.1 *Governing Law***

The laws of the State of Georgia shall govern the Contract and any action on the Contract shall be filed in the Superior Court of Fulton County.

### **17.2 *Successors and Assigns***

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. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### **17.3 *Written Notice***

In the absence of any other specific notice requirements set forth elsewhere in the Contract Documents, regarding a specific subject matter, notice shall be in writing, dated and personally signed by party giving notice or their duly authorized representative. Mechanical and/or electronically generated signatures are not acceptable under the terms and conditions of this Contract. Notice shall be deemed to be duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice. Copies of notice or correspondence shall be distributed amongst the various parties of the Work by the party generating such notice or correspondence. Notwithstanding the above, the OWNER, OR and CONTRACTOR shall be required to provide where specifically set forth in the Contract or as directed in writing by the OR.

### **17.4 *Rights, Remedies, Duties and Obligations Cumulative***

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder, shall be in addition to any duties, obligations, rights, and remedies otherwise imposed or available by law.

### **17.5 *No Waiver***

No action or failure to act by OWNER, OWNER Consultant, ARCHITECT, ARCHITECT Consultant or the CONTRACTOR shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.

### **17.6 *Contract Language Controls***

Custom and practice, industry standards, past (pre-Project) course of dealings, shall not be used to explain, interpret, supply or contradict the express text of this Contract unless a different intent is expressed in this Contract.

17.7 ***Communications Facilitating Contract Administration***

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, CONTRACTOR shall communicate to OWNER and OWNER Consultants, through the OR and then only in writing with copies to all affected and/or mentioned parties. Official communications and notice shall be in writing only. Verbal communications are not official or binding under the Contract. Verbal communication, including directions, cannot be, and shall not be, the basis for: any change in the Contract Amount; Milestones; Contract Time; or any Claim, action, cause of action or other remedy regarding the Work and/or Contract and/or a breach thereof.

17.8 ***Claims Involving Injury or Damage to Person or Property***

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party with sufficient detail to enable the other party to investigate the matter.

17.9 ***Computation of Time***

17.9.1 When any period of time is referred to in the Contract Documents by days and/or calendar days, it will be computed to exclude the first and include the last day of such period;

17.9.2 a day of twenty-four hours measured from midnight to the next midnight will constitute a day and/or calendar day.

17.10 ***Oral Agreements or Modifications***

No oral conversation, representation or agreement with any representative of OWNER, OWNER Consultant, ARCHITECT, ARCHITECT Consultant, OR or any other employee or agent of OWNER shall affect, modify any of the terms and conditions in any documents comprising this Contract.

17.11 ***Unfair Business Practice Claims; Assignment to OWNER***

In entering into a public works Contract or a subcontract to supply goods, services, or materials pursuant to a public works Contract, the CONTRACTOR and/or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR without further acknowledgement by the parties.

END OF SECTION