

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

Cobb County School District
514 Glover Street
Marietta, Georgia 30060

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

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

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

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

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, 12.3
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2
Addenda
1.1.1
Additional Costs, Claims for
3.7.4, 3.7.5, 10.3.2, 15.1.5
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, 13.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.6
Administration of the Contract
3.1.3, 4.2, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8
Applications for Payment
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10
Approvals
2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,
3.12.10.1, 4.2.7, 9.3.2, 13.4.1
Arbitration
8.3.1, 15.3.2, 15.4
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1
Architect, Limitations of Authority and
Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2
Architect's Additional Services and Expenses
2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.6.8, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for
Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1
Binding Dispute Resolution
8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1
Bonds, Lien
7.3.4.4, 9.6.8, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5
Building Information Models Use and Reliance
1.8
Building Permit
3.7.1
Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5

Certificates for Payment
 4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,
 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4
 Certificates of Inspection, Testing or Approval
 13.4.4
 Certificates of Insurance
 9.10.2
 Change Orders
 1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,
 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,
 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
 Change Orders, Definition of
 7.2.1
 CHANGES IN THE WORK
 2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,
 11.5
 Claims, Definition of
 15.1.1
 Claims, Notice of
 1.6.2, 15.1.3
 CLAIMS AND DISPUTES
 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
 Claims and Timely Assertion of Claims
 15.4.1
 Claims for Additional Cost
 3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5
 Claims for Additional Time
 3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6
 Concealed or Unknown Conditions, Claims for
 3.7.4
 Claims for Damages
 3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,
 11.3.2, 14.2.4, 15.1.7
 Claims Subject to Arbitration
 15.4.1
 Cleaning Up
 3.15, 6.3
 Commencement of the Work, Conditions Relating to
 2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,
 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5
 Commencement of the Work, Definition of
 8.1.2
 Communications
 3.9.1, 4.2.4
 Completion, Conditions Relating to
 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,
 9.10, 12.2, 14.1.2, 15.1.2
 COMPLETION, PAYMENTS AND
 9
 Completion, Substantial
 3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,
 9.10.3, 12.2, 15.1.2
 Compliance with Laws
 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,
 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,
 15.2.8, 15.4.2, 15.4.3
 Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3
 Conditions of the Contract
 1.1.1, 6.1.1, 6.1.4
 Consent, Written
 3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,
 15.4.4.2
 Consolidation or Joinder
 15.4.4
 CONSTRUCTION BY OWNER OR BY
 SEPARATE CONTRACTORS
 1.1.4, 6
 Construction Change Directive, Definition of
 7.3.1
 Construction Change Directives
 1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,
 7.3, 9.3.1.1
 Construction Schedules, Contractor's
 3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
 Contingent Assignment of Subcontracts
 5.4, 14.2.2.2
 Continuing Contract Performance
 15.1.4
 Contract, Definition of
 1.1.2
 CONTRACT, TERMINATION OR SUSPENSION
 OF THE
 5.4.1.1, 5.4.2, 11.5, 14
 Contract Administration
 3.1.3, 4, 9.4, 9.5
 Contract Award and Execution, Conditions Relating
 to
 3.7.1, 3.10, 5.2, 6.1
 Contract Documents, Copies Furnished and Use of
 1.5.2, 2.3.6, 5.3
 Contract Documents, Definition of
 1.1.1
 Contract Sum
 2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,
 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,
 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5
 Contract Sum, Definition of
 9.1
 Contract Time
 1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,
 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,
 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,
 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
 Contract Time, Definition of
 8.1.1
 CONTRACTOR
 3
 Contractor, Definition of
 3.1, 6.1.2
 Contractor's Construction and Submittal Schedules
 3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
 Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors
and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,
9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, 15.2.5

Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
 Faulty Work
 (See Defective or Nonconforming Work)
 Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3
 Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
 GENERAL PROVISIONS
 1
 Governing Law
 13.1
 Guarantees (See Warranty)
 Hazardous Materials and Substances
 10.2.4, 10.3
 Identification of Subcontractors and Suppliers
 5.2.1
 Indemnification
 3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3
 Information and Services Required of the Owner
 2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
 14.1.1.4, 14.1.4, 15.1.4
 Initial Decision
 15.2
 Initial Decision Maker, Definition of
 1.1.8
 Initial Decision Maker, Decisions
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
 Initial Decision Maker, Extent of Authority
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
 Injury or Damage to Person or Property
 10.2.8, 10.4
 Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.4
 Instructions to Bidders
 1.1.1
 Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2
 Instruments of Service, Definition of
 1.1.7
 Insurance
 6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,
 11
 Insurance, Notice of Cancellation or Expiration
 11.1.4, 11.2.3
 Insurance, Contractor's Liability
 11.1
 Insurance, Effective Date of
 8.2.2, 14.4.2
 Insurance, Owner's Liability
 11.2
 Insurance, Property
 10.2.5, 11.2, 11.4, 11.5
 Insurance, Stored Materials
 9.3.2

INSURANCE AND BONDS
 11
 Insurance Companies, Consent to Partial Occupancy
 9.9.1
 Insured loss, Adjustment and Settlement of
 11.5
 Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13
 Interest
 13.5
 Interpretation
 1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
 Interpretations, Written
 4.2.11, 4.2.12
 Judgment on Final Award
 15.4.2
 Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
 10.2.4, 14.2.1.1, 14.2.1.2
 Labor Disputes
 8.3.1
 Laws and Regulations
 1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
 15.4
 Liens
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
 Limitations, Statutes of
 12.2.5, 15.1.2, 15.4.1.1
 Limitations of Liability
 3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
 11.3, 12.2.5, 13.3.1
 Limitations of Time
 2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
 15.1.2, 15.1.3, 15.1.5
 Materials, Hazardous
 10.2.4, 10.3
 Materials, Labor, Equipment and
 1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
 Means, Methods, Techniques, Sequences and
 Procedures of Construction
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
 Mechanic's Lien
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
 Mediation
 8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
 15.4.1.1
 Minor Changes in the Work
 1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4
 MISCELLANEOUS PROVISIONS
 13

Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, 12.3
Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2
Notice
1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1
Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3
Notice of Claims
1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1
Notice of Testing and Inspections
13.4.1, 13.4.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.3.1, 9.6.6, 9.8
Orders, Written
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4
Owner, Information and Services Required of the
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4
Owner's Authority
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.5, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award

Separate Contracts
6.1
Owner's Right to Stop the Work
2.4
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2, 14.4
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3
Partial Occupancy or Use
9.6.6, 9.9
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Payments, Progress
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1
Performance Bond and Payment Bond
7.3.4.4, 9.6.7, 9.10.3, 11.1.2
Permits, Fees, Notices and Compliance with Laws
2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4
Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4
Project, Definition of
1.1.4
Project Representatives

4.2.10
 Property Insurance
 10.2.5, 11.2
 Proposal Requirements
 1.1.1
 PROTECTION OF PERSONS AND PROPERTY
 10
 Regulations and Laws
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,
 15.4
 Rejection of Work
 4.2.6, 12.2.1
 Releases and Waivers of Liens
 9.3.1, 9.10.2
 Representations
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
 Representatives
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
 Responsibility for Those Performing the Work
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
 Retainage
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
 Review of Contract Documents and Field Conditions
 by Contractor
 3.2, 3.12.7, 6.1.3
 Review of Contractor's Submittals by Owner and
 Architect
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
 Review of Shop Drawings, Product Data and
 Samples by Contractor
 3.12
 Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
 12.2.4, 13.3, 14, 15.4
 Royalties, Patents and Copyrights
 3.17
 Rules and Notices for Arbitration
 15.4.1
 Safety of Persons and Property
 10.2, 10.4
 Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
 Samples, Definition of
 3.12.3
 Samples, Shop Drawings, Product Data and
 3.11, 3.12, 4.2.7
 Samples at the Site, Documents and
 3.11
 Schedule of Values
 9.2, 9.3.1
 Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
 Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
 Separate Contractors, Definition of

6.1.1
 Shop Drawings, Definition of
 3.12.1
 Shop Drawings, Product Data and Samples
 3.11, 3.12, 4.2.7
 Site, Use of
 3.13, 6.1.1, 6.2.1
 Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
 Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
 Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
 Specifications, Definition of
 1.1.6
 Specifications
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
 Statute of Limitations
 15.1.2, 15.4.1.1
 Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
 Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
 Subcontractor, Definition of
 5.1.1
 SUBCONTRACTORS
 5
 Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,
 9.3.1.2, 9.6.7
 Subcontractual Relations
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
 Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,
 9.8, 9.9.1, 9.10.2, 9.10.3
 Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
 Subrogation, Waivers of
 6.1.1, 11.3
 Substances, Hazardous
 10.3
 Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,
 12.2, 15.1.2
 Substantial Completion, Definition of
 9.8.1
 Substitution of Subcontractors
 5.2.3, 5.2.4
 Substitution of Architect
 2.3.3
 Substitutions of Materials
 3.4.2, 3.5, 7.3.8
 Sub-subcontractor, Definition of
 5.1.2
 Subsurface Conditions
 3.7.4
 Successors and Assigns

13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,
15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, 15.1.7
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.3
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement (including Exhibit A thereto), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, the Payment and Performance Bonds, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents also include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and the Addenda or Bulletins.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not be liable for results of interpretations or decisions.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, labor, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for. The Contract Documents are complementary, and what

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is required by one shall be as binding as if required by all. 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 showed and/or specified. In the event of any discrepancy in the Contract Documents, the more specific and more detailed descriptive information will take precedence over the general and less detailed description. In cases of doubt, Contractor shall assume that Owner intends that the more complete method, system, or process is required. If discrepancies in the Contract Documents are not corrected by Addenda during the bid period, the Contractor represents and warrants that 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.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Various sections of the Specifications identify related work specified elsewhere; however, such listings are to serve solely as guidelines and are NOT to be construed as the only areas of related work or otherwise limit the duties of Contractor or any Subcontractor(s).

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

§ 1.2.4 Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or law or regulation in effect at the time of the opening of Contractor's bid (or, the date of the Contract if there were no bids), unless otherwise specifically stated. However, no provision of any standard specification, manual, or code shall be effective to change the duties and responsibilities of Owner, Contractor, or Architect, or any of their consultants, agents, or employees from those set forth in the Contract Documents.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

§ 1.6.1 Except as otherwise specifically provided in the Contract Documents (including, without limitation, in Section 1.6.2 herein), where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

(Paragraphs Deleted)

Reserved.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor who shall have had previous experience in the administration of construction contracts of similar scope and whose status under the Contract Documents shall be that of the Architect.

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within seven (7) days following demand therefore by the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall at all times be lawfully licensed to perform the Work hereunder as required by the Georgia State Licensing Board for Residential and General Contractors. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. For the duration of the Work, the Contractor and the Contractor's major subcontractors (as applicable) must utilize the Owner's Internet-based project management software, PlanGrid. The Contractor and the Contractor's major subcontractors (as

applicable) shall upload/download Work/project documents and communications using this software as directed by the Owner. The Contractor shall obtain Contractor's own license(s) for PlanGrid at the Contractor's sole expense. The Contractor will be added to the Project in the Owner's instance of PlanGrid.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Before undertaking each part of the Work and as necessary throughout the performance of the Work, the Contractor shall take field measurements and verify field conditions, and shall carefully review, inspect and compare the Contract Documents, field conditions (including subsurface conditions, underground facilities and existing structures) and work of others (including work performed by the Owner's own forces) in order to check and verify pertinent materials, figures, measurements, and conditions necessary for proper execution and coordination of the Work and with all other work of the Project. The Contractor shall promptly report in writing to the Architect and the Owner any conflict, error, or discrepancy, including any variance with applicable laws or regulations which the Contractor may discover at any time, and shall obtain a written interpretation or clarification from the Architect before proceeding with any of the Work affected thereby. If the

Contractor proceeds with any of the Work affected by any discovered conflict, error or discrepancy, the Contractor shall be liable for all extra costs and delays incurred thereby.

§ 3.2.3 Reserved.

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

§ 3.3 Supervision and Construction Procedures

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

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

Contractor of any such acts or omissions, the Contractor shall immediately cure such acts or omissions or the results thereof.

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness in order to avoid delays in the Work.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent Project Manager, Superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Project Manager and Superintendent shall represent the Contractor, and communications given to the Project Manager and Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall similarly be confirmed on written request by any party.

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Owner's approval of said schedule shall not be unreasonably withheld. However, by approving the construction schedule, neither the Owner nor the Architect assumes any responsibility for determining whether the schedule will ensure completion of the Work by the time required in the Contract Documents. Further, all scheduling and construction means and methods shall remain the sole responsibility of the Contractor. The dates for completion of the phases of construction set forth in the Contractor's construction schedule for the Work are firm dates for completion of each phase of the Work as set forth herein. Failure of the Contractor to have completed a phase of the Work by the date set forth in the construction schedule will be a substantial breach of the Contract and the Owner will have available to it all remedies under the Contract as a result of such breach by the Contractor.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Contractor shall carry on the Work and adhere to the schedule during all disputes or disagreements with the Owner.

§ 3.10.4 The Owner and/or the Architect may direct the Contractor to accelerate the Work. In the event such Owner-directed or Architect-directed acceleration causes the Contractor to incur extra costs, the Contractor expressly agrees that its sole and exclusive remedy for such Owner or Architect-directed acceleration shall be (1) direct non-labor job site costs and approved direct job-related material, equipment and fabrication costs (not to include overhead and profit) incurred as a result of such acceleration and net of savings occasioned by such acceleration, and (2) the difference in the wage rates and benefits, if any, between premium wage rates and benefits incurred and wage rates and benefits charged during normal working hours. The Contractor expressly waives any claim for inefficiencies which might result from any acceleration of the Work for less than thirty (30) days duration in the aggregate, regardless of fault. Nothing in this Section shall imply that the Owner will be required to pay any cost differential for premium time or material, equipment, or fabrication costs unless such time is expended in response to a written directive from the Owner or the Architect, which directive acknowledges that the Owner will pay such costs.

§ 3.10.5 The Owner and the Architect expressly reserve the right to order the Contractor to accelerate the Work in the event that the Contractor will not meet approved milestone dates set forth on the schedule or the date of Substantial Completion due to the fault of the Contractor. The Owner shall not be liable for any extra costs incurred by acceleration of the Work ordered because the Contractor will not meet approved milestone dates set forth on the schedule or the date of Substantial Completion due to the Contractor's fault. In the event of the acceleration due to concurrent or joint fault of the Contractor and the Owner or the Architect, the Contractor agrees that such fault shall be apportioned between the Contractor and the Owner, and that the Contractor's exclusive remedies set forth in the Contract Documents shall apply to the net period of acceleration.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and a record copy thereof shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. When requested by the Architect, the Contractor shall also prepare coordination drawings setting forth the manner and location in which various components of the Work are to be installed, and such coordination drawings shall be treated as additional Shop Drawings. Simultaneous with the submission of any of the foregoing submittals to the Architect, the Contractor shall also submit such submittals to the Owner.

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Any such performance shall be at Contractor's sole risk and expense.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given explicit written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof including, without limitation, the responsibility for defects in the Work arising from performance of Work or installation of materials or systems which are in accordance with approved Shop Drawings, Product Data, Samples, or other similar submittals, but which do not conform to the requirements of the Contract Documents.

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

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

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

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

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall have inspected the site prior to submitting its bid and agrees that the areas for parking, storage, and lay down of materials and access to the site are acceptable to the Contractor and that the Owner will not be required to alter or interrupt any other operations going on at the Project site.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

§ 3.19 Failure to Perform Work

§ 3.19.1 The Contractor shall be liable to the Owner for all costs or damages which the Owner incurs as a result of the Contractor's failure to perform the Work, or any part thereof, in accordance with the Contract Documents. The Contractor's liability for the failure to perform the Work shall include, but not be limited to, (1) the increased costs of performance, including that of the Architect and the other consultants resulting from the Contractor's failure to comply with the Contract Documents; (2) costs of corrective or warranty work; (3) liability to third-parties; (4) re-procurement costs; (5) liquidated damages as set forth below for failure to achieve Substantial Completion within the time stated in the Contract Documents and/or any liquidated damages set forth in the Specifications or Supplementary Conditions for the failure to achieve any milestone(s) established therein; and (6) attorneys' fees and related costs, including those incurred in enforcing the Owner's rights under the Contract Documents.

§ 3.19.2 Time limits stated in the Contract Documents are of the essence of the Contract, and any delay in the performance of the Work may inconvenience the Owner, its employees, students and parents, the public, and other stakeholders, and interfere with and disrupt school operations. For this reason, it is imperative that the Work be pressed vigorously to completion. Should the Contractor fail to achieve Substantial Completion of the Work within the time stipulated in the Contract Documents or within such extra time that may be allowed, liquidated damages shall be assessed against any money due or that may become due to the Contractor in accordance with the following schedule:

Schedule of Liquidated Damages for Each Day of Overrun in Contract Time		
Original Contract Amount		Liquidated Damages Per Diem
From More Than	To and Including	
\$0	\$100,000	\$100
\$100,000	\$500,000	\$250
\$500,000	\$1,00,000	\$500

Init.

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User Notes:

(3B9ADA38)

\$1,000,000	\$5,000,000	\$1,000
\$5,000,000	\$10,000,000	\$2,000
\$10,000,000	-	\$3,000

These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the Owner and the Contractor due to the uncertainty and impossibility of making a determination as to the actual and consequential damages which are incurred by the Owner, its employees, students and parents, the public, and other stakeholders, as a result of the Contractor's failure to achieve Substantial Completion of the Work on time. The Owner may, but shall not be obligated to, waive such portions of the liquidated damages as may accrue after the Work is in a condition for safe and convenient use by the Owner and its students for the purposes intended. For the avoidance of doubt, the Owner's exercise of its rights to partially occupy or use the Work prior to Substantial Completion under Section 9.9.1 shall not relieve the Contractor of its obligations under this Section 3.19.

§ 3.19.3 Should the Work involve separate and distinct phases as set forth in the Specifications and/or Supplementary Conditions and establish completion dates for such phases, the Contractor additionally acknowledges and agrees that the time limits stated therein are of the essence of the Contract and that the liquidated damages may apply in the event the Contractor fails to complete the phases of the Work, all as set forth more particularly in the Specifications and/or Supplementary Conditions. Liquidated damages for failure to complete one (1) or more phases of the Work by the agreed-upon date are in addition to, and are not in lieu of, any liquidated or other damages which may be due under this Section 3.19 due to the Contractor's separate failure to achieve Substantial Completion of the entirety of the Work within the Contract Time.

§ 3.20 Liens

In the event that a lien or claim of lien is filed by anyone in relation to the Work, the Owner shall have the right (1) to require the Contractor to have the same discharged by posting a bond with the appropriate authorities within five (5) days of notice by the Owner to the Contractor, or (2) to retain, out of any payment due or thereafter to become due to the Contractor, an amount sufficient to indemnify the Owner against said lien or claim of lien, including bond premiums and attorneys fees, and to apply the same in such manner as the Owner deems necessary to secure protection and/or satisfy such claim or lien. In the event such lien is not discharged, the Owner shall have the right to terminate the Contract for default or to bond off said lien and recover from the Contractor all costs incurred as a result thereof, including, but not limited to, bond premiums and attorney's fees. Prior to receipt of partial or final payment, as appropriate, the Contractor shall provide to the Owner a partial or final release of its liens and claims and partial or final releases of all liens and claims of all persons furnishing labor and/or materials to the Work, and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work. This Section shall not apply if the Owner is not current in payment of properly certified pay applications.

§ 3.21 Work Relating to Existing Facilities

§ 3.21.1 The Contractor shall not perform work in or on existing buildings which will interfere with normal school operations, teaching, or normal traffic flow or produce excessive noise, without twenty-four (24) hours' notice to the school principal, and then only with the principal's concurrence.

§ 3.21.2 The Owner's Facility Security and/or Fire/Life/Safety requirements may require the services of a guard during nights or weekends. If a guard is required by the nature of the Work, the Contractor shall provide the same at no additional cost to the Owner.

§ 3.21.3 ALL MEANS OF EGRESS SHALL BE MAINTAINED AT ALL TIMES DURING SCHOOL OCCUPANCY TO COMPLY WITH EXIT REQUIREMENTS IN THE NFPA 101 LIFE SAFETY CODE.

§ 3.21.4 The Contractor shall not allow his traffic or operations to encumber school vehicular or pedestrian traffic during school hours. Space for parking of the Contractor's personnel may be offsite.

§ 3.21.5 Any work required to be completed by the Contractor before the opening of school, but that has not been completed by the opening of school, shall be performed by the Contractor after the opening of school in accordance with this Section 3.21, at no additional cost to the Owner. Overtime work after normal school hours, during normal work days and on weekends may be required to accomplish the work necessary to maintain or recover the construction schedule and/or complete the Work. This does not prohibit operations during normal work hours as the Owner's primary use of the school building(s) for educational purposes may allow.

§ 3.21.6 The Contractor shall remove, store, and reinstall existing furniture, fixtures, and equipment required to be moved to accomplish the Work. All existing furniture, fixtures, and equipment are not necessarily shown on the Drawings.

§ 3.21.7 Every person associated in any way with the Work, while on the site and/or in the building, shall visibly wear a photo-identification badge. The badge shall show the person's name and their employer's name in bold letters. The photo shall be full-face and current. The face shall have a minimum height of one (1) inch.

§ 3.22 Immigration Compliance

In order to ensure compliance with the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90 *et seq.*, and all regulations promulgated thereunder, the Contractor will provide, prior to the start of work and immediately from time to time upon the Owner's request during the performance of the Work, a signed and executed Contractor Affidavit and provide a copy of the applicable Subcontractor Affidavits for all Subcontractors, regardless of tier, performing work on the Project site. Contractor's failure and/or inability to provide all such required affidavits shall constitute a substantial breach of this Agreement and give the Owner the right to terminate this Agreement pursuant to Section 14.2.1.4.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

For the duration of the Project, the Architect and Architect's consultants, contractors and engineers (as applicable) must utilize the Owner's internet-based project management software, PlanGrid. The Architect and Architect's consultants, contractors and engineers (as applicable) shall upload/download project documents and communications using this software as directed by the Owner. The Architect shall obtain Architect's own license(s) for PlanGrid at the Architect's (Contractor's) sole expense. The Architect will be added to the Project in the Owner's instance of PlanGrid.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not

have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

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

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

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

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise within fifteen (15) days after the Architect's receipt of the written request.

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

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

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

§ 4.3 Progress and Coordination Meetings

§ 4.3.1 A Preconstruction Conference shall be held prior to the issuance of a Notice to Proceed. The Owner, the Architect, consultants, the Contractor including, at minimum, its Project Manager and Superintendent, major subcontractors, and representatives of Separate Contractors (if applicable) shall attend.

§ 4.3.2 Prior to or at the Preconstruction Conference, the Contractor shall submit to the Architect the following: (1) list of major subcontractors and contact information; (2) list of the Contractor's supervisors and contact information for each including, but not limited to, 24 hour phone numbers for the Project Manager and Superintendent; (3) Insurance Certificates; (4) Performance and Payment Bonds; and (5) preliminary CPM construction schedule and preliminary submittal schedule.

§ 4.3.3 A progress and coordination meeting will be held weekly on-site. At such meetings, the Contractor will provide a written progress report outlining the progress of completion of the Work in accordance with the construction schedule provided for in Section 3.10.1, containing no less information than that provided in the portion of the Specifications and/or Supplementary Conditions applicable to the schedules. In the event that the Work is not progressing at the time of the report in accordance with said construction schedule, the report shall set forth the necessary actions to cause the Work to be completed in accordance with said construction schedule. The Contractor shall distribute minutes of the meetings to all participants within seven (7) days of the meeting. The Contractor, represented by its Projects Manager, the Contractor's Superintendent, the Subcontractors and suppliers (as requested by the Owner or the Architect), the Architect's representative, and the Owner's representative shall attend the weekly progress meetings.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.1.3 At all times during the performance of the Work, all Subcontractors and Sub-subcontractors of each and every tier shall maintain the appropriate professional license(s) to perform their Work required hereunder, as required by Georgia law.

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

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

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Contractor shall notify Owner and Architect at least seven (7) days prior to the substitution of any major Subcontractor.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

§ 6.1.4 The Contractor shall afford the Owner and each Separate Contractor proper and safe access to the site and a reasonable opportunity for the introduction and storage of material and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. The Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work by others by cutting, excavating, or otherwise altering their work and will only cut or later their work with the written consent of the Owner and the others whose work will be affected.

§ 6.1.5 The Owner may furnish materials or equipment to the site to be incorporated into the Work. If the Owner furnishes any equipment or materials to be incorporated into the Work, the Contractor shall perform such tasks as are necessary to coordinate and install the Owner-furnished materials or equipment to make the Work function completely. If the Contractor contends that such Owner-furnished materials or equipment constitute an extra to the Work, the Contractor may request reimbursement for the direct field costs incurred in installing such Owner-furnished materials or equipment in accordance with the procedures set forth in Article 7.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent nor reasonably discoverable.

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.2.2 The methods to be used in determining adjustments to the Contract Sum by Change Order shall be those listed in Section 7.3.3.

§ 7.2.3 A Change Order will be authorized by the Owner only after a written approval of the request for Change has been authorized. This written approval, "Request for Additional Project Dollars", is mandatory before any Change Order can be authorized.

§ 7.2.4 The Architect shall request, and the Contractor shall submit, a cost proposal for all proposed Changes in the Work consisting of additional, deletions, or revisions. The cost proposal shall include all estimates, breakdowns, costs, data, and/or information required in order to validate a Change in the Work. The Architect shall review all items on the proposal request and make a recommendation to the Owner concerning the acceptance or rejection of all or any portion of the request. The Contractor shall not be entitled to any adjustments in the Contract Sum or Contract Time for preparing a cost proposal, regardless whether such proposal is ultimately accepted or not.

§ 7.2.5 The Owner will review the proposal request and the Architect's recommendation and, if the Owner is in agreement with the Contractor, will prepare and submit a "Request for Additional Project Dollars" to be submitted to the Owner's Executive Director-SPLOST for approval and authorization.

§ 7.2.6 The Owner must approve and authorize the proposal request on Form 6011. If the request is approved by the Owner's Executive Director-SPLOST and is less than \$25,000, the Architect and the Contractor shall consider such approval as full authorization to proceed with the Change in the Work. The Architect shall, upon receipt of verbal notification that the proposal request has been approved, prepare the Change Order for execution by the parties. The Architect shall further direct the Contractor to proceed with the Changes to the Work prior to execution of the Change Order. "Requests for Additional Project Dollars" forms executed by the Owner's Executive Director-SPLOST for Changes under \$25,000 shall be as binding on the Owner as a fully executed Change Order.

§ 7.2.7 For proposal requests equal to or greater than \$25,000 and less than \$200,000, approval of the Form 6011 must be given by the Superintendent of Schools. Only after the Superintendent's approval may the Architect prepare the Change Order for execution by the parties. The Architect shall direct the Contractor to proceed with the Changes to the Work after the Superintendent's written approval is received.

§ 7.2.8 For proposal requests equal to or greater than \$200,000, approval is required by formal action of the Owner's Board of Education. Only after the Board of Education's approval may the Architect prepare the Change Order for execution by the parties. The Architect shall direct the Contractor to proceed with the Changes to the Work after the Board of Education's approval is given.

§ 7.2.9 By executing a Change Order, the Contractor acknowledges and agrees that:

- .1 Such Change Order is for the full and final amount of the Contract Sum and Contract Time adjustments due to the Contractor for all work related to the Change Order; and
- .2 The stated extension of Contract Time is equitable in nature, includes all compensation to the Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change, and that no further claims for any extension of the Contract Time or adjustment in the Contract Sum, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead, or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of the Contract Time or adjustment in the Contract Sum are waived in their entirety.

A Change Order shall not have any reservation of rights and/or qualifying language placed on it.

§ 7.3 Construction Change Directives

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

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

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

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

§ 7.3.4 **§ 7.3.4.1** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth herein. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Owner;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.4.2 The allowance for overhead and profit for any Construction Change Directive or Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision,

superintendent, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined), shall be determined as follows:

- 1 To the Contractor for work which he performs with his own forces, an amount not to exceed fifteen percent (15%) of his net additional cost;
- 2 To a Subcontractor for work which he performs with his own forces, an amount not to exceed fifteen percent (15%) of his net additional cost; and
- 3 To the Contractor for work performed by his Subcontractor(s), an amount not to exceed seven and one-half percent (7.5%) of the amount due to the Subcontractor(s).

§ 7.3.4.3 Any other provision in the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Changes performed concurrently with the Work, unless the cost includes a claim for extension of time caused by the ordering of the Change.

§ 7.3.4.4 All Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit amount shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

§ 7.3.4.5 The Contractor shall not submit groups of partial proposals or requests relative to a singular item of Change. Requests for time extensions relative to the Change shall be identified in the proposal or request.

§ 7.3.4.6 In order to facilitate the checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontractor costs. Labor and materials shall be itemized in the manner prescribed above.

Where major costs items are Subcontractor costs, they shall be itemized also. In no case will a Change Order for more than \$100 be approved without such itemization. Proposals shall be rounded off to the nearest whole dollar amount.

§ 7.3.4.7 The Contractor shall sequentially number each of his proposals or requests and maintain a current log of all proposals, requests, Change Orders and Construction Change Directives, and shall provide the Owner and the Architect with access to the same as requested.

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

§ 7.5 Changes without Approval

§ 7.5.1 Changes in the Work performed by the Contractor without the prior approval or consent of the Owner in accordance with the provisions set forth above shall be performed at no cost to the Owner and shall not result in any adjustment to the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment on the forms provided by the Owner, prepared in accordance with the schedule of values, for completed portions of the Work. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Change Orders shall be individually identified as separate line items.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

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

§ 9.5.2 If Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1 or Owner's decision under Section 9.6.1, in whole or in part, then Contractor may submit a Claim in accordance with Article 15.

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

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Certificate of Payment and take subsequent action as follows: (1) if found to be in proper order, the Owner shall forward the Pay Application for payment; or (2) if, after review, the Owner finds just cause to consider that the Pay Application is erroneous in any respect (e.g., information, format, amounts, percentages, etc.) or determines any amount sought therein is not due under Section 9.5.1, the Owner will review these errors with the Architect and may exercise the option to either: (a) return the Pay Application to the Architect, who may then return it to the Contractor, for correction, recertification and reprocessing; or (b) hand-correct the Pay Application to reflect the necessary corrections. Upon presentation of a proper Pay Application, the Owner shall make payment in the manner and

within the time provided in the Contract Documents, and shall so notify the Architect. The Contractor acknowledges that his preparation of erroneous Pay Applications may cause delays in the Pay Applications being processed for payment. The occasion of such delays will not constitute cause for seeking claims or compensation for increases in the Contract Sum or Contract Time. Payment forms shall be submitted so they will reach the Owner each month no later than the date shown on the most recent Owner's Payment Schedule. If the payment requisition reaches the Owner in correct order by the date shown, payment will be made on or before the day of the following month as indicated. If this date is missed, payment will be made on the second pay period in each month shown. Only one (1) payment per month will be made.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

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

§ 9.6.9 Progress payments will be made for Work completed and materials delivered and properly stored and insured in accordance with the Contract Documents, less the aggregate of previous payments, as follows:

§ 9.6.9.1 Ninety percent (90%) of the portion of the Contract Sum properly allocated to labor, materials and equipment incorporated into the Work; plus

§ 9.6.9.2 Ninety percent (90%) of the portion of the Contract Sum properly allocated to materials and equipment suitably stored at the site (or some other location agreed-to in writing by the parties) and properly insured.

§ 9.6.9.3 When the work-in-place (not including values for stored materials) becomes fifty percent (50%) complete as determined by the Architect and the Owner, if the manner of completion of the Work and its progress are, and remain satisfactory to the Architect and the Owner and, (1) in the absence of other good and sufficient reasons and (2) on presentation of consent of surety on AIA Form G-707 by the Contractor, the Owner will hold no additional retainage until Substantial Completion, such that, at Substantial Completion, the retainage will be equal to five percent (5%) of the Contract Sum plus five percent (5%) of approved Change Orders. Upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%), less the retainage as the Architect shall determine for all incomplete work and unsettled claims, shall be paid to the Contractor.

§ 9.6.9.4 The Contractor shall, within ten (10) days from receipt of retainage from the Owner, pass through payments to Subcontractors and suppliers, and shall reduce each of their retainage in the same manner as which the Contractor's retainage is reduced by the Owner, provided that the value of each Subcontractor or supplier's work completed and in-place equals fifty percent (50%) of their subcontract value (including approved Change Orders and other additions to the subcontract value), and provided further that the work of the Subcontractor or supplier is proceeding satisfactorily and the Subcontractor or supplier provides such satisfactory assurances of continuing performance and financial responsibility to complete their work (including any warranty work) as the Contractor, in his reasonable discretion, may require.

§ 9.6.9.5 If, after discontinuance of retainage, either the Architect or the Owner determine that the Work is unsatisfactory or has fallen behind schedule, retainage may, at the Owner's option, be resumed back to the previous level.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.9.4 Should the Project, or any portion thereof, be incomplete for Substantial Completion or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project as it deems necessary or appropriate. In such event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project by the Owner. Further, the Contractor shall not be relieved of any responsibilities of the Contractor, including the required time(s) of completion. Such occupancy by the Owner does not, in itself, constitute Substantial Completion or Final Completion.

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety to final payment on AIA Form G707, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security

interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Upon receipt of all Project close-out documents and acceptance of the Certificate of Final Completion, executed by the Contractor, the Owner will then authorize the issuance of final payment.

§ 9.10.3 At the discretion of the Owner and except as set forth in this Section, no progress payments will be made after the payment made to bring the total paid up to ninety-five percent (95%) of the Contract Sum, until the final payment. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

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

§ 9.10.6 The Contractor shall pay to the Owner amounts equal to the Owner's actual costs of continuing to provide administrative architectural and/or engineering services for the Project beginning sixty (60) days after the scheduled date of completion for each phase of the Project.

§ 9.10.7 The Contractor hereby expressly agrees that, pursuant to O.C.G.A. § 13-11-7(a), the payment provisions within the Contract Documents shall supersede the rates of interest, payment periods, payment terms, contract and subcontract terms, and attorneys' fees provisions 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, payment terms, contract and subcontract terms, and attorneys' fees provisions provided for under the Prompt Payment Act shall have no application to the Work to be performed hereunder.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

The Contractor shall further take precautions in maintaining the indoor air quality of buildings where students, teachers, employees, and visitors occupy the areas immediately adjacent to or near

the Work, and shall further insure that exhaust systems and dust caused by the Work do not enter the existing fresh air intake devices.

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

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

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

§ 10.2.5 The Contractor shall promptly repair, remedy, and/or correct any damage or loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, at its own cost and expense. The Contractor shall promptly perform such repairs, remedies, and/or corrections, notwithstanding that such damage or loss may be insured under property insurance. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 Subcontractors

§ 10.2.9.1 The Contractor shall ensure that each subcontract requires its Subcontractors to participate in and enforce the safety and loss prevention programs established by the Contractor for the Work and the Project, which will cover all Work performed by the 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 meeting with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. All Subcontractors and suppliers shall cooperate fully with the Owner, Contractor, Architect, and all insurance carriers and loss prevention personnel.

§ 10.2.9.2 The Contractor shall ensure that each subcontract requires its Subcontractors to promptly report in writing to the 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 property damage results, the accident shall be reported immediately by telephone; the Contractor shall thereafter promptly report the facts in writing to the Owner and Architect giving full details of the incident.

§ 10.3 Hazardous Materials and Substances

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

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

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

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

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

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

§ 10.3.7 No materials shall be incorporated into the Work that contain asbestos, PCB, radon or fossil fuel soil contaminants or other hazardous materials.

§ 10.3.8 Building materials which are schedules to be incorporated into the Work shall first either be certified by the manufacturer to be asbestos free or be inspected and tested by accredited parties and certified to be free of asbestos content in accordance with the Asbestos Hazard Emergency Response Act of 1986 and all EPA and DOE regulations applicable thereto including, without limitation, the 1982 Asbestos-in-Schools regulations.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

(Paragraphs Deleted)

§ 11.3 Waivers of Subrogation

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

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

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§ 11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 The Owner shall have the power to adjust and settle any loss with the insurers unless one of the parties in interest shall object thereto in writing within five (5) days after the occurrence of the loss. Should any party in interest object within the time period set forth above, any dispute with respect thereto shall be resolved pursuant to Article 15.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Sections 3.5 and 12.2.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Georgia, without regard to its conflict of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraph Deleted)

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals; except that the Owner will pay the fees of the testing laboratories employed by the Owner. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

§ 13.4.7 Where the Contract Documents require that the Work or any portion thereof be inspected, tested, or approved, and when the Contractor believes that the Work or such portion is ready therefore, the Contractor shall give timely notice of the same to the Architect. However, should any part of the Work requiring inspection, testing, or approval not be in readiness, the Contractor shall pay all salaries, professional fees and travel expenses as applicable for the persons inconvenienced by the Contractor's inaccurate notice.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall not bear interest.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

(Paragraph Deleted)

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

repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit as to the portion of the Work which was installed, performed and/or stored on the site and accepted by the Owner. The Contractor shall not be entitled to recover consequential damages, profit or overhead for that portion of the Work or the Contract which was not performed.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, unless directed otherwise by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders and enter into no further subcontracts, rental agreements, and/or purchase orders;
- .4 **settled all outstanding liabilities and all claims arising out of the termination of subcontracts and purchase orders;**
- .5 **as directed by the Owner, assign to the Owner all of the Contractor's right, title, and interest under any subcontracts and purchase orders for the Work; and**
- .6 **as directed by the Owner, transfer title and deliver to the Owner the fabricated or unfabricated parts of the Work in progress, completed Work, supplies, and other materials produced as a part of, or acquired in connection with, the performance of the Work, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Owner.**

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed or performed and costs incurred by reason of the termination. The Contractor shall submit to the Owner, within sixty (60) days of the receipt of the written notice of termination, its itemized costs for unpaid Work together with all costs of Work in progress and materials and equipment rented or ordered prior to the notice of termination and which were not terminable as required by the Owner. The Owner shall, within sixty (60) days of its receipt of such itemized costs, pay the Contractor for such costs, together with an appropriate pro-rata portion of the Contractor's overhead and profit which, unless termination occurs within sixty (60) days after issuance of the Notice to Proceed, shall not exceed fifteen percent (15%) of all field costs incurred by the Contractor. Under no circumstances shall the costs used to calculate the pro-rata portion of the Contractor's overhead and profit include any home office overhead or administrative costs.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

§ 15.1.2.1 As between the Owner and the Contractor:

- .1 as to acts or failures to act occurring prior to the date of Substantial Completion, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than such date of Substantial Completion;
- .2 as to acts or failures to act occurring subsequent to the date of Substantial Completion and prior to the issuance of final payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than such date of final payment; and
- .3 as to acts or failures to act occurring after the date of final payment, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or the failure to correct the Work by the Contractor under Section 12.2, or the date of actual

commission of any other act or failure to perform any duty or obligation the Contractor or the Owner, whichever occurs last.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except that Claims under Section 15.1.8 shall follow the procedures and be governed by the time limits set forth in such Section.

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

§ 15.1.4 Continuing Contract Performance

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

In no event shall either party initiate litigation prior to the achievement of Final Completion.

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 Bad Weather

§ 15.1.6.2.1 Completion time will not be extended for normal bad weather. The time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors. For the purposes of this Contract, the Contractor agrees that he may expect to lose a TOTAL number of calendar days between the "start-of-work" date and the "building enclosed date" due to weather in accordance with the following: January, 22 days; February, 16 days; March, 11 days; April, 7 days; May, 4 days; June, 6 days; July, 8 days; August, 6 days; September, 4 days; October, 5 days; November, 9 days; December, 15 days.

§ 15.1.6.2.2 The Contractor agrees that, for the purpose of this Contract, a "day lost to weather" is a calendar day in which either (1) precipitation exceeds 0.10 inches or (2) the average hourly daytime temperature failed to exceed 40 degrees Fahrenheit, unless the maximum temperature exceed 50 degrees Fahrenheit, in each case as averaged from three local weather stations over the same period of time. This is the same source of data used to determine normal weather losses.

§ 15.1.6.2.3 If the aggregate number of calendar days (not on an individual, month-to-month basis), pro-rated for the "start-of-work" and "building enclosed" months, lost to weather from the "start-of-work date" to the "building enclosed date" exceeds the total aggregate days to be expected from the same period as detailed in Section 15.1.6.2.1, the time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension will be made for days or bad weather occurring after the building is enclosed. No reduction in the Contract Time shall be imposed if the total days actually lost to weather is less than the total to have been expected during the same period. For the avoidance of doubt, it shall be the obligation of the Contractor to make and substantiate all Claims under this Section 15.1.6.2.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. The Contractor further acknowledges and agrees that none of the items specifically enumerated in Section 3.19 hereof constitute "consequential damages" or are otherwise included in this waiver.

§ 15.1.8 Remedies for Delay

§ 15.1.8.1 For delays within the Contractor's control or which could have been anticipated by the Contractor, the Contractor shall not be entitled to any extension of the Contract Time nor any increase in the Contract Sum incurred on account of such delay, and the Contractor shall finish the Work in accordance with the Contract Documents.

§ 15.1.8.2 For delays to the Work caused by an event outside the control of the Contractor or the Owner including, (1) if such delay is thirty (30) days or less, the Contractor's sole and exclusive remedy shall be an extension of the Contract Time and, (2) if such delay exceeds thirty (30) days, the Contractor's sole and exclusive remedy shall be an extension of the Contract Time and an increase in the Contract Sum equal to the direct field costs and approved direct, job-related material and equipment costs which the Contractor could not reasonably avoid, incurred on account of the delay, beginning on the thirty-first (31st) day of such delay; provided, however, that the Contractor shall not be entitled to any extension of the Contractor Time or increase in the Contract Sum if such delay could have been reasonably anticipated by the Contractor. Any delays caused in part by the Owner and in part by the Contractor shall, to the extent not subject to the provisions of Section 15.1.8.1 above, shall be deemed concurrent delays and shall be subject to the provisions of this Section 15.1.8.2.

§ 15.1.8.3 For delays to the Work caused solely by the Owner, the Architect, or Separate Contractors, the Contractor's sole and exclusive remedy against the Owner shall be an extension of the Contract Time and an increase in the Contract Sum equal to the direct field costs and approved direct, job-related material and equipment costs which the Contractor could not reasonably avoid, incurred on account of such delay.

§ 15.1.8.4 Under no circumstances in which a delay has occurred will the Contractor be entitled to any indirect field or home overhead costs, including home office overhead, or any costs which result from any subsequent acceleration or recovery of the Work, excepts as specifically provided for in Section 3.10.4.

§ 15.1.8.5 The Contractor and the Owner acknowledge that damages arising from unreasonable and unforeseen 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 complete the project. The Contractor and the Owner acknowledge that the Project is such a project. Therefore, the parties establish the procedures set forth in this Section 15.1.8 and elsewhere in this Article 15 as the exclusive procedures for fully and finally resolving any and all damages to the Contractor, its Subcontractors, and/or any other person who may claim under and/or through them, of every nature, type, and kind, arising in whole or in part from such delays, disruptions, interferences, hindrances, and/or accelerations.

§ 15.1.8.6 If the 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 of the Work or any portion thereof (other than bad weather, which shall be governed by Section 15.1.6.2), the Contractor shall provide written notice thereof to the Architect and the Owner no later than three (3) days after first encountering the issue, event, condition, circumstance, and/or cause. The notice shall describe the issue or event in reasonable detail, identify when the issue or event began and the cause or reason therefore, and set forth the recovery or remediation

plan and a preliminary timeline therefore. The Contractor shall also raise the issue, event, condition, circumstance, and/or cause of a perceived and/or actual delay, disruption, interference, hindrance, and/or acceleration at the first Project meeting with the Owner and Architect 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.

§ 15.1.8.7 Within three (3) days of the ending of the issue, event, condition, circumstance, and/or cause referred to in Section 15.1.8.6, the Contractor shall provide written notice to the Architect and the Owner notifying them of the date on which the issue, event, condition, circumstance, and/or cause ended. If the Contractor fails to provide the notice, the Architect or the Owner may provide the notice to the Contractor.

§ 15.1.8.8 Within thirty (30) days of a notice being issued by the Contractor or the Owner pursuant to Section 15.1.8.7, if the Contractor contends that the issue, event, condition, circumstance, and/or cause entitles the Contractor to an adjustment in the Contract Sum and/or Contract Time, then the Contractor shall prepare and submit a Claim to the Architect and the Owner. Should the Contractor fail or refuse to submit a Claim within such time period and/or fail or refuse to comply with the notice and other requirements of this Section 15.1.8, the Contractor admits that it would be depriving the Owner of an opportunity to timely mitigate the issue, event, circumstance, condition and/or cause. As such, the Contractor's failure and/or refusal to follow the requirements of this Section 15.1.8 are an admission that the Contractor is not entitled to any adjustment in the Contract Sum and/or Contract Time, and the Contractor accordingly waives, relinquishes and releases any and all Claims in connection therewith.

§ 15.2 Initial Decision

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

§ 15.2.2 The Initial Decision Maker will review Claims and within thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 If either the Contractor or the

Owner disagrees with the Initial Decision Maker's decision, the disagreeing party shall notify the other party and the Architect of its disagreement in writing. Thereafter, either party may demand that the claim be mediated in accordance with Section 15.3. The mediation shall not take place until after Substantial Completion is achieved. The mediation of all Claims in accordance with Section 15.3 is a prerequisite to litigation.

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

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

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 Either party may, following the conclusion of the mediation without resolution of the dispute, initiate litigation.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, subject to the approval of the Owner's Board of Education and/or Superintendent as may be applicable.

§ 15.4 Litigation

§ 15.4.1 If the dispute resolution proceedings set forth in Sections 15.2 and 15.3 have been completed and a Claim is still unresolved, then (and only then) shall the Contractor or the Owner file a

lawsuit with the Superior Court of Cobb County, Georgia. However, in no event can the lawsuit be filed before Final Completion.

§ 15.4.2 The Contractor and the Owner hereby agree that any lawsuit arising out of or

related to this Contract or the Work shall be filed exclusively in

(Paragraph Deleted)

the Superior Court of Cobb County, Georgia, irrevocably submit to the personal jurisdiction of such court and the laying of venue therein, and

irrevocably waive any objection they may have to the exercise of personal jurisdiction by and the laying of venue in such court.



| *(Paragraph Deleted)*

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Additions and Deletions Report for AIA® Document A201® – 2017

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PAGE 1

Cobb County School District
514 Glover Street
Marietta, Georgia 30060

PAGE 9

ARTICLE 1 GENERAL PROVISIONS

...

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

...

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

...

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

PAGE 10

§ 1.2.1 The intent of the Contract Documents is to ~~include all items necessary for the proper execution and completion of the Work by the Contractor.~~ describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, labor, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended results shall be supplied by Contractor whether or not specifically called for. The Contract Documents are complementary, and what is required by one shall be as binding as if required ~~by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results by all.~~ 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 showed and/or specified. In the event of any discrepancy in the Contract Documents, the more specific and more detailed descriptive information will take precedence over the general and less detailed description. In cases of doubt, Contractor shall assume that Owner intends that the more complete method, system, or process is required. If discrepancies in the Contract Documents are not corrected by Addenda during the bid period, the Contractor represents and warrants that 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.

...

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Various sections of the Specifications identify related work specified elsewhere; however, such listings are to serve solely as guidelines and are NOT to be construed as the only areas of related work or otherwise limit the duties of Contractor or any Subcontractor(s).

...

§ 1.2.4 Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or law or regulation in effect at the time of the opening of Contractor's bid (or, the date of the Contract if there were no bids), unless otherwise specifically stated. However, no provision of any standard specification, manual, or code shall be effective to change the duties and responsibilities of Owner, Contractor, or Architect, or any of their consultants, agents, or employees from those set forth in the Contract Documents.

PAGE 11

§ 1.6.1 Except as otherwise ~~provided in Section 1.6.2,~~ specifically provided in the Contract Documents (including, without limitation, in Section 1.6.2 herein), where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

...

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

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have

express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Absent subsequent written notice to Contractor, for purposes hereof, "Owner's authorized representative" is its Executive Director-SPLOST.

...

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

...

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

...

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

...

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

...

Reserved.

PAGE 12

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection who shall have had previous experience in the administration of construction contracts of similar scope and whose status under the Contract Documents shall be that of the Architect.~~

...

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

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~seven (7) day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for~~In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within seven (7) days following demand therefore by the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall ~~be lawfully licensed, if required in the jurisdiction where the Project is located.~~at all times be lawfully licensed to perform the Work hereunder as required by the Georgia State Licensing Board for Residential and General Contractors. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

PAGE 13

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. For the duration of the Work, the Contractor and the Contractor's major subcontractors (as applicable) must utilize the Owner's Internet-based project management software, PlanGrid. The Contractor and the Contractor's major subcontractors (as applicable) shall upload/download Work/project documents and communications using this software as directed by the Owner. The Contractor shall obtain Contractor's own license(s) for PlanGrid at the Contractor's sole expense. The Contractor will be added to the Project in the Owner's instance of PlanGrid.

...

§ 3.2.2 ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional,~~

~~unless otherwise specifically provided in the Contract Documents. Before undertaking each part of the Work and as necessary throughout the performance of the Work, the Contractor shall take field measurements and verify field conditions, and shall carefully review, inspect and compare the Contract Documents, field conditions (including subsurface conditions, underground facilities and existing structures) and work of others (including work performed by the Owner's own forces) in order to check and verify pertinent materials, figures, measurements, and conditions necessary for proper execution and coordination of the Work and with all other work of the Project. The Contractor shall promptly report in writing to the Architect and the Owner any conflict, error, or discrepancy, including any variance with applicable laws or regulations which the Contractor may discover at any time, and shall obtain a written interpretation or clarification from the Architect before proceeding with any of the Work affected thereby. If the~~

...

~~§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Contractor proceeds with any of the Work affected by any discovered conflict, error or discrepancy, the Contractor shall be liable for all extra costs and delays incurred thereby.~~

...

§ 3.2.3 Reserved.

...

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

...

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

PAGE 14

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

Contractor of any such acts or omissions, the Contractor shall immediately cure such acts or omissions or the results thereof.

...

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

...

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

...

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

...

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

...

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

...

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

...

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

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor~~, Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

...

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness~~, promptness in order to avoid delays in the Work.

...

§ 3.9.1 The Contractor shall employ a competent ~~superintendent~~ Project Manager, Superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent~~ Project Manager and Superintendent shall represent the Contractor, and communications given to the ~~superintendent~~ Project Manager and Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall similarly be confirmed on written request by any party.

...

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

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

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Owner's approval of said schedule shall not be unreasonably withheld. However, by approving the construction schedule, neither the Owner nor the Architect assumes any responsibility for determining whether the schedule will ensure completion of the Work by the time required in the Contract Documents. Further, all scheduling and construction means and methods shall

remain the sole responsibility of the Contractor. The dates for completion of the phases of construction set forth in the Contractor's construction schedule for the Work are firm dates for completion of each phase of the Work as set forth herein. Failure of the Contractor to have completed a phase of the Work by the date set forth in the construction schedule will be a substantial breach of the Contract and the Owner will have available to it all remedies under the Contract as a result of such breach by the Contractor.

...

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Contractor shall carry on the Work and adhere to the schedule during all disputes or disagreements with the Owner.

...

§ 3.10.4 The Owner and/or the Architect may direct the Contractor to accelerate the Work. In the event such Owner-directed or Architect-directed acceleration causes the Contractor to incur extra costs, the Contractor expressly agrees that its sole and exclusive remedy for such Owner or Architect-directed acceleration shall be (1) direct non-labor job site costs and approved direct job-related material, equipment and fabrication costs (not to include overhead and profit) incurred as a result of such acceleration and net of savings occasioned by such acceleration, and (2) the difference in the wage rates and benefits, if any, between premium wage rates and benefits incurred and wage rates and benefits charged during normal working hours. The Contractor expressly waives any claim for inefficiencies which might result from any acceleration of the Work for less than thirty (30) days duration in the aggregate, regardless of fault. Nothing in this Section shall imply that the Owner will be required to pay any cost differential for premium time or material, equipment, or fabrication costs unless such time is expended in response to a written directive from the Owner or the Architect, which directive acknowledges that the Owner will pay such costs.

...

§ 3.10.5 The Owner and the Architect expressly reserve the right to order the Contractor to accelerate the Work in the event that the Contractor will not meet approved milestone dates set forth on the schedule or the date of Substantial Completion due to the fault of the Contractor. The Owner shall not be liable for any extra costs incurred by acceleration of the Work ordered because the Contractor will not meet approved milestone dates set forth on the schedule or the date of Substantial Completion due to the Contractor's fault. In the event of the acceleration due to concurrent or joint fault of the Contractor and the Owner or the Architect, the Contractor agrees that such fault shall be apportioned between the Contractor and the Owner, and that the Contractor's exclusive remedies set forth in the Contract Documents shall apply to the net period of acceleration.

PAGE 17

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and a record copy thereof shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. When requested by the Architect, the Contractor shall also prepare coordination drawings setting forth the manner and location in which various components of the Work are to be

installed, and such coordination drawings shall be treated as additional Shop Drawings. Simultaneous with the submission of any of the foregoing submittals to the Architect, the Contractor shall also submit such submittals to the Owner.

...

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Any such performance shall be at Contractor's sole risk and expense.

...

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given explicit written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval ~~thereof~~thereof including, without limitation, the responsibility for defects in the Work arising from performance of Work or installation of materials or systems which are in accordance with approved Shop Drawings, Product Data, Samples, or other similar submittals, but which do not conform to the requirements of the Contract Documents.

PAGE 18

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall have inspected the site prior to submitting its bid and agrees that the areas for parking, storage, and lay down of materials and access to the site are acceptable to the Contractor and that the Owner will not be required to alter or interrupt any other operations going on at the Project site.

...

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

...

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

PAGE 19

§3.19 Failure to Perform Work

...

§ 3.19.1 The Contractor shall be liable to the Owner for all costs or damages which the Owner incurs as a result of the Contractor's failure to perform the Work, or any part thereof, in accordance with the Contract Documents. The Contractor's liability for the failure to perform the Work shall include, but not be limited to, (1) the increased costs of performance, including that of the Architect and the other consultants resulting from the Contractor's failure to comply with the Contract Documents; (2) costs of corrective or warranty work; (3) liability to third-parties; (4) re-procurement costs; (5) liquidated damages as set forth below for failure to achieve Substantial Completion within the time stated in the Contract Documents and/or any liquidated damages set forth in the Specifications or

Supplementary Conditions for the failure to achieve any milestone(s) established therein; and (6) attorneys' fees and related costs, including those incurred in enforcing the Owner's rights under the Contract Documents.

...

§ 3.19.2 Time limits stated in the Contract Documents are of the essence of the Contract, and any delay in the performance of the Work may inconvenience the Owner, its employees, students and parents, the public, and other stakeholders, and interfere with and disrupt school operations. For this reason, it is imperative that the Work be pressed vigorously to completion. Should the Contractor fail to achieve Substantial Completion of the Work within the time stipulated in the Contract Documents or within such extra time that may be allowed, liquidated damages shall be assessed against any money due or that may become due to the Contractor in accordance with the following schedule:

PAGE 20

Schedule of Liquidated Damages for Each Day of Overrun in Contract Time		
Original Contract Amount		Liquidated Damages Per Diem
From More Than	To and Including	
\$0	\$100,000	\$100
\$100,000	\$500,000	\$250
\$500,000	\$1,000,000	\$500
\$1,000,000	\$5,000,000	\$1,000
\$5,000,000	\$10,000,000	\$2,000
\$10,000,000	-	\$3,000

...

These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the Owner and the Contractor due to the uncertainty and impossibility of making a determination as to the actual and consequential damages which are incurred by the Owner, its employees, students and parents, the public, and other stakeholders, as a result of the Contractor's failure to achieve Substantial Completion of the Work on time. The Owner may, but shall not be obligated to, waive such portions of the liquidated damages as may accrue after the Work is in a condition for safe and convenient use by the Owner and its students for the purposes intended. For the avoidance of doubt, the Owner's exercise of its rights to partially occupy or use the Work prior to Substantial Completion under Section 9.9.1 shall not relieve the Contractor of its obligations under this Section 3.19.

...

§ 3.19.3 Should the Work involve separate and distinct phases as set forth in the Specifications and/or Supplementary Conditions and establish completion dates for such phases, the Contractor additionally acknowledges and agrees that the time limits stated therein are of the essence of the Contract and that the liquidated damages may apply in the event the Contractor fails to complete the phases of the Work, all as set forth more particularly in the Specifications and/or Supplementary Conditions. Liquidated damages for failure to complete one (1) or more phases of the Work by the agreed-upon date are in addition to, and are not in lieu of, any liquidated or other damages which may be due under this Section 3.19 due to the Contractor's separate failure to achieve Substantial Completion of the entirety of the Work within the Contract Time.

...

§ 3.20 Liens

...

In the event that a lien or claim of lien is filed by anyone in relation to the Work, the Owner shall have the right (1) to require the Contractor to have the same discharged by posting a bond with the appropriate authorities within five (5) days of notice by the Owner to the Contractor, or (2) to retain, out of any payment due or thereafter to become due to the Contractor, an amount sufficient to indemnify the Owner against said lien or claim of lien, including bond premiums and attorneys fees, and to apply the same in such manner as the Owner deems necessary to secure protection and/or satisfy such claim or lien. In the event such lien is not discharged, the Owner shall have the right to terminate the Contract for default or to bond off said lien and recover from the Contractor all costs incurred as a result thereof, including, but not limited to, bond premiums and attorney's fees. Prior to receipt of partial or final payment, as appropriate, the Contractor shall provide to the Owner a partial or final release of its liens and claims and partial or final releases of all liens and claims of all persons furnishing labor and/or materials to the Work, and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work. This Section shall not apply if the Owner is not current in payment of properly certified pay applications.

...

§ 3.21 Work Relating to Existing Facilities

...

§ 3.21.1 The Contractor shall not perform work in or on existing buildings which will interfere with normal school operations, teaching, or normal traffic flow or produce excessive noise, without twenty-four (24) hours' notice to the school principal, and then only with the principal's concurrence.

...

§ 3.21.2 The Owner's Facility Security and/or Fire/Life/Safety requirements may require the services of a guard during nights or weekends. If a guard is required by the nature of the Work, the Contractor shall provide the same at no additional cost to the Owner.

...

§ 3.21.3 ALL MEANS OF EGRESS SHALL BE MAINTAINED AT ALL TIMES DURING SCHOOL OCCUPANCY TO COMPLY WITH EXIT REQUIREMENTS IN THE NFPA 101 LIFE SAFETY CODE.

...

§ 3.21.4 The Contractor shall not allow his traffic or operations to encumber school vehicular or pedestrian traffic during school hours. Space for parking of the Contractor's personnel may be offsite.

...

§ 3.21.5 Any work required to be completed by the Contractor before the opening of school, but that has not been completed by the opening of school, shall be performed by the Contractor after the opening of school in accordance with this Section 3.21, at no additional cost to the Owner. Overtime work after normal school hours, during normal work days and on weekends may be required to accomplish the work necessary to maintain or recover the construction schedule and/or complete the Work. This does not prohibit operations during normal work hours as the Owner's primary use of the school building(s) for educational purposes may allow.

§ 3.21.6 The Contractor shall remove, store, and reinstall existing furniture, fixtures, and equipment required to be moved to accomplish the Work. All existing furniture, fixtures, and equipment are not necessarily shown on the Drawings.

...

§ 3.21.7 Every person associated in any way with the Work, while on the site and/or in the building, shall visibly wear a photo-identification badge. The badge shall show the person's name and their employer's name in bold letters. The photo shall be full-face and current. The face shall have a minimum height of one (1) inch.

...

§ 3.22 Immigration Compliance

...

In order to ensure compliance with the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90 *et seq.*, and all regulations promulgated thereunder, the Contractor will provide, prior to the start of work and immediately from time to time upon the Owner's request during the performance of the Work, a signed and executed Contractor Affidavit and provide a copy of the applicable Subcontractor Affidavits for all Subcontractors, regardless of tier, performing work on the Project site. Contractor's failure and/or inability to provide all such required affidavits shall constitute a substantial breach of this Agreement and give the Owner the right to terminate this Agreement pursuant to Section 14.2.1.4.

...

For the duration of the Project, the Architect and Architect's consultants, contractors and engineers (as applicable) must utilize the Owner's internet-based project management software, PlanGrid. The Architect and Architect's consultants, contractors and engineers (as applicable) shall upload/download project documents and communications using this software as directed by the Owner. The Architect shall obtain Architect's own license(s) for PlanGrid at the Architect's (Contractor's) sole expense. The Architect will be added to the Project in the Owner's instance of PlanGrid.

...

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests

will be made in writing within any time limits agreed upon or otherwise ~~with reasonable promptness within fifteen~~ (15) days after the Architect's receipt of the written request.

PAGE 23

§ 4.3 Progress and Coordination Meetings

...

§ 4.3.1 A Preconstruction Conference shall be held prior to the issuance of a Notice to Proceed. The Owner, the Architect, consultants, the Contractor including, at minimum, its Project Manager and Superintendent, major subcontractors, and representatives of Separate Contractors (if applicable) shall attend.

...

§ 4.3.2 Prior to or at the Preconstruction Conference, the Contractor shall submit to the Architect the following: (1) list of major subcontractors and contact information; (2) list of the Contractor's supervisors and contact information for each including, but not limited to, 24 hour phone numbers for the Project Manager and Superintendent; (3) Insurance Certificates; (4) Performance and Payment Bonds; and (5) preliminary CPM construction schedule and preliminary submittal schedule.

...

§ 4.3.3 A progress and coordination meeting will be held weekly on-site. At such meetings, the Contractor will provide a written progress report outlining the progress of completion of the Work in accordance with the construction schedule provided for in Section 3.10.1, containing no less information than that provided in the portion of the Specifications and/or Supplementary Conditions applicable to the schedules. In the event that the Work is not progressing at the time of the report in accordance with said construction schedule, the report shall set forth the necessary actions to cause the Work to be completed in accordance with said construction schedule. The Contractor shall distribute minutes of the meetings to all participants within seven (7) days of the meeting. The Contractor, represented by its Projects Manager, the Contractor's Superintendent, the Subcontractors and suppliers (as requested by the Owner or the Architect), the Architect's representative, and the Owner's representative shall attend the weekly progress meetings.

...

§ 5.1.3 At all times during the performance of the Work, all Subcontractors and Sub-subcontractors of each and every tier shall maintain the appropriate professional license(s) to perform their Work required hereunder, as required by Georgia law.

...

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

PAGE 24

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Contractor shall notify Owner and Architect at least seven (7) days prior to the substitution of any major Subcontractor.

...

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

...

- .2 assignment is subject to the prior rights of the surety, if any, obligated under ~~bond~~ the Performance Bond relating to the Contract.

...

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

PAGE 25

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

...

~~§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction~~ The Contractor shall afford the Owner and each Separate Contractor proper and safe access to the site and a reasonable opportunity for the introduction and storage of material and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. The Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work by others by cutting, excavating, or otherwise altering their work and will only cut or later their work with the written consent of the Owner and the others whose work will be affected.

...

or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12. § 6.1.5 The Owner may furnish materials or equipment to the site to be incorporated into the Work. If the Owner furnishes any equipment or materials to be incorporated into the Work, the Contractor shall perform such tasks as are necessary to coordinate and install the Owner-furnished materials or equipment to make the Work function completely. If the Contractor contends that such Owner-furnished materials or equipment constitute an extra to the Work, the Contractor may request reimbursement for the direct field costs incurred in installing such Owner-furnished materials or equipment in accordance with the procedures set forth in Article 7.

...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ apparent nor reasonably discoverable.

PAGE 26

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

...

§ 7.2.2 The methods to be used in determining adjustments to the Contract Sum by Change Order shall be those listed in Section 7.3.3.

...

§ 7.2.3 A Change Order will be authorized by the Owner only after a written approval of the request for Change has been authorized. This written approval, "Request for Additional Project Dollars", is mandatory before any Change Order can be authorized.

...

§ 7.2.4 The Architect shall request, and the Contractor shall submit, a cost proposal for all proposed Changes in the Work consisting of additional, deletions, or revisions. The cost proposal shall include all estimates, breakdowns, costs, data, and/or information required in order to validate a Change in the Work. The Architect shall review all items on the proposal request and make a recommendation to the Owner concerning the acceptance or rejection of all or any portion of the request. The Contractor shall not be entitled to any adjustments in the Contract Sum or Contract Time for preparing a cost proposal, regardless whether such proposal is ultimately accepted or not.

...

§ 7.2.5 The Owner will review the proposal request and the Architect's recommendation and, if the Owner is in agreement with the Contractor, will prepare and submit a "Request for Additional Project Dollars" to be submitted to the Owner's Executive Director-SPLOST for approval and authorization.

...

§ 7.2.6 The Owner must approve and authorize the proposal request on Form 6011. If the request is approved by the Owner's Executive Director-SPLOST and is less than \$25,000, the Architect and the Contractor shall consider such approval as full authorization to proceed with the Change in the Work. The Architect shall, upon receipt of verbal notification that the proposal request has been approved, prepare the Change Order for execution by the parties. The Architect shall further direct the Contractor to proceed with the Changes to the Work prior to execution of the Change Order. "Requests for Additional Project Dollars" forms executed by the Owner's Executive Director-SPLOST for Changes under \$25,000 shall be as binding on the Owner as a fully executed Change Order.

...

§ 7.2.7 For proposal requests equal to or greater than \$25,000 and less than \$200,000, approval of the Form 6011 must be given by the Superintendent of Schools. Only after the Superintendent's approval may the Architect prepare the Change Order for execution by the parties. The Architect shall direct the Contractor to proceed with the Changes to the Work after the Superintendent's written approval is received.

PAGE 27

§ 7.2.8 For proposal requests equal to or greater than \$200,000, approval is required by formal action of the Owner's Board of Education. Only after the Board of Education's approval may the Architect prepare the Change Order for execution by the parties. The Architect shall direct the Contractor to proceed with the Changes to the Work after the Board of Education's approval is given.

...

§ 7.2.9 By executing a Change Order, the Contractor acknowledges and agrees that:

...

.1 Such Change Order is for the full and final amount of the Contract Sum and Contract Time adjustments due to the Contractor for all work related to the Change Order; and

...

.2 The stated extension of Contract Time is equitable in nature, includes all compensation to the Contractor for any and all effects, delays, inefficiencies or similar demands associated with the Change, and that no further claims for any extension of the Contract Time or adjustment in the Contract Sum, for whatever reason and of whatever kind, whether direct or indirect, cost, profit, overhead, or any other expense, shall be made against the Owner or the agents of the Owner for the work enumerated in the Change Order, and that any and all such claims for an extension of the Contract Time or adjustment in the Contract Sum are waived in their entirety.

...

A Change Order shall not have any reservation of rights and/or qualifying language placed on it.

...

§ 7.3.4-7.3.4§ 7.3.4.1 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of

those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth ~~in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount herein.~~ In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

...

- .1 ~~Costs of labor,~~ labor for those directly involved in performing the Work at the Project site, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect;~~ Owner;

PAGE 28

§ 7.3.4.2 The allowance for overhead and profit for any Construction Change Director or Change Order, which shall include all pro-rated home office expenses for the Project, insurance, travel, supervision, superintendent, timekeepers, clerks, watchmen, small tools, incidental job burdens and general office expenses and profits combined), shall be determined as follows:

...

- .1 To the Contractor for work which he performs with his own forces, an amount not to exceed fifteen percent (15%) of his net additional cost;

...

- .2 To a Subcontractor for work which he performs with his own forces, an amount not to exceed fifteen percent (15%) of his net additional cost; and

...

- .3 To the Contractor for work performed by his Subcontractor(s), an amount not to exceed seven and one-half percent (7.5%) of the amount due to the Subcontractor(s).

...

§ 7.3.4.3 Any other provision in the Contract Documents to the contrary notwithstanding, only demonstrable, direct out-of-pocket costs plus percentages for overhead and profit as set forth herein shall be allowable for Changes performed concurrently with the Work, unless the cost includes a claim for extension of time caused by the ordering of the Change.

...

§ 7.3.4.4 All Sub-subcontractors are considered to have been established solely for the convenience of the Contractor and its immediate Subcontractors. To this end, the allowable Subcontractor overhead and profit amount shall not be derived by compounding the established percentages upon themselves through their Sub-subcontractors.

...

§ 7.3.4.5 The Contractor shall not submit groups of partial proposals or requests relative to a singular item of Change. Requests for time extensions relative to the Change shall be identified in the proposal or request.

...

§ 7.3.4.6 In order to facilitate the checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and Subcontractor costs. Labor and materials shall be itemized in the manner prescribed above. Where major costs items are Subcontractor costs, they shall be itemized also. In no case will a Change Order for more than \$100 be approved without such itemization. Proposals shall be rounded off to the nearest whole dollar amount.

...

§ 7.3.4.7 The Contractor shall sequentially number each of his proposals or requests and maintain a current log of all proposals, requests, Change Orders and Construction Change Directives, and shall provide the Owner and the Architect with access to the same as requested.

PAGE 29

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

...

§ 7.5 Changes without Approval

...

§ 7.5.1 Changes in the Work performed by the Contractor without the prior approval or consent of the Owner in accordance with the provisions set forth above shall be performed at no cost to the Owner and shall not result in any adjustment to the Contract Time.

...

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

PAGE 30

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

the Architect or Owner may require, and unless objected to by the ~~Architect~~, Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment on the forms provided by the Owner, prepared in accordance with the schedule of values, ~~if required under Section 9.2~~, for completed portions of the Work. The application shall be ~~notarized, if required~~, notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Change Orders shall be individually identified as separate line items.

...

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

...

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

PAGE 31

.1 defective Work not ~~remedied~~; remedied or correction thereof by the Owner;

...

§ 9.5.2 ~~When either party~~ If Contractor disputes the Architect's decision regarding a Certificate for Payment under Section ~~9.5.1, 9.5.1~~ or Owner's decision under Section 9.6.1, in whole or in part, ~~that party then Contractor~~ may submit a Claim in accordance with Article 15.

...

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

PAGE 32

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Certificate of Payment and take subsequent action as follows: (1) if found to be in proper order, the Owner shall forward the Pay Application for payment; or (2) if, after review, the Owner finds just cause to consider that the Pay Application is erroneous in any respect (e.g., information, format, amounts, percentages, etc.) or determines any amount sought therein is not due under Section 9.5.1, the Owner will review these errors with the Architect and may exercise the option to either: (a) return the Pay Application to the Architect, who may then return it to the Contractor, for correction, recertification and reprocessing; or (b) hand-correct the Pay Application to reflect the necessary corrections. Upon presentation of a proper Pay Application, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Contractor

acknowledges that his preparation of erroneous Pay Applications may cause delays in the Pay Applications being processed for payment. The occasion of such delays will not constitute cause for seeking claims or compensation for increases in the Contract Sum or Contract Time. Payment forms shall be submitted so they will reach the Owner each month no later than the date shown on the most recent Owner's Payment Schedule. If the payment requisition reaches the Owner in correct order by the date shown, payment will be made on or before the day of the following month as indicated. If this date is missed, payment will be made on the second pay period in each month shown. Only one (1) payment per month will be made.

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

...

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

...

§ 9.6.9 Progress payments will be made for Work completed and materials delivered and properly stored and insured in accordance with the Contract Documents, less the aggregate of previous payments, as follows:

...

§ 9.6.9.1 Ninety percent (90%) of the portion of the Contract Sum properly allocated to labor, materials and equipment incorporated into the Work; plus

...

§ 9.6.9.2 Ninety percent (90%) of the portion of the Contract Sum properly allocated to materials and equipment suitably stored at the site (or some other location agreed-to in writing by the parties) and properly insured.

PAGE 33

§ 9.6.9.3 When the work-in-place (not including values for stored materials) becomes fifty percent (50%) complete as determined by the Architect and the Owner, if the manner of completion of the Work and its progress are, and remain satisfactory to the Architect and the Owner and, (1) in the absence of other good and sufficient reasons and (2) on presentation of consent of surety on AIA Form G-707 by the Contractor, the Owner will hold no additional retainage until Substantial Completion, such that, at Substantial Completion, the retainage will be equal to five percent (5%) of the Contract Sum plus five percent (5%) of approved Change Orders. Upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%), less the retainage as the Architect shall determine for all incomplete work and unsettled claims, shall be paid to the Contractor.

...

§ 9.6.9.4 The Contractor shall, within ten (10) days from receipt of retainage from the Owner, pass through payments to Subcontractors and suppliers, and shall reduce each of their retainage in the same manner as which the Contractor's retainage is reduced by the Owner, provided that the value of each Subcontractor or supplier's work completed and in-place equals fifty percent (50%) of their subcontract value (including approved Change Orders and other additions to the subcontract value), and provided further that the work of the Subcontractor or supplier is proceeding satisfactorily and the Subcontractor or supplier provides such satisfactory assurances of continuing performance and financial responsibility to complete their work (including any warranty work) as the Contractor, in his reasonable discretion, may require.

...

§ 9.6.9.5 If, after discontinuance of retainage, either the Architect or the Owner determine that the Work is unsatisfactory or has fallen behind schedule, retainage may, at the Owner's option, be resumed back to the previous level.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, ~~the amount certified by the Architect or awarded by binding dispute resolution,~~ then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

PAGE 34

§ 9.9.4 Should the Project, or any portion thereof, be incomplete for Substantial Completion or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project as it deems necessary or appropriate. In such event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project by the Owner. Further, the Contractor shall not be relieved of any responsibilities of the Contractor, including the required time(s) of completion. Such occupancy by the Owner does not, in itself, constitute Substantial Completion or Final Completion.

PAGE 35

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, effect and will not be canceled or

allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, surety to final payment on AIA Form G707, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Upon receipt of all Project close-out documents and acceptance of the Certificate of Final Completion, executed by the Contractor, the Owner will then authorize the issuance of final payment.

...

§ 9.10.3 At the discretion of the Owner and except as set forth in this Section, no progress payments will be made after the payment made to bring the total paid up to ninety-five percent (95%) of the Contract Sum, until the final payment. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

...

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

...

§ 9.10.6 The Contractor shall pay to the Owner amounts equal to the Owner's actual costs of continuing to provide administrative architectural and/or engineering services for the Project beginning sixty (60) days after the scheduled date of completion for each phase of the Project.

...

§ 9.10.7 The Contractor hereby expressly agrees that, pursuant to O.C.G.A. § 13-11-7(a), the payment provisions within the Contract Documents shall supersede the rates of interest, payment periods, payment terms, contract and subcontract terms, and attorneys' fees provisions 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, payment terms, contract and subcontract terms, and attorneys' fees provisions provided for under the Prompt Payment Act shall have no application to the Work to be performed hereunder.

PAGE 36

The Contractor shall further take precautions in maintaining the indoor air quality of buildings where students, teachers, employees, and visitors occupy the areas immediately adjacent to or near

the Work, and shall further insure that exhaust systems and dust caused by the Work do not enter the existing fresh air intake devices.

...

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

...

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

...

§ 10.2.9 Subcontractors

...

§ 10.2.9.1 The Contractor shall ensure that each subcontract requires its Subcontractors to participate in and enforce the safety and loss prevention programs established by the Contractor for the Work and the Project, which will cover all Work performed by the 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 meeting with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. All Subcontractors and suppliers shall cooperate fully with the Owner, Contractor, Architect, and all insurance carriers and loss prevention personnel.

...

§ 10.2.9.2 The Contractor shall ensure that each subcontract requires its Subcontractors to promptly report in writing to the 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 property damage results, the accident shall be reported immediately by telephone; the Contractor shall thereafter promptly report the facts in writing to the Owner and Architect giving full details of the incident.

PAGE 37

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

...

§ 10.3.7 No materials shall be incorporated into the Work that contain asbestos, PCB, radon or fossil fuel soil contaminants or other hazardous materials.

...

§ 10.3.8 Building materials which are schedules to be incorporated into the Work shall first either be certified by the manufacturer to be asbestos free or be inspected and tested by accredited parties and certified to be free of asbestos content in accordance with the Asbestos Hazard Emergency Response Act of 1986 and all EPA and DOE regulations applicable thereto including, without limitation, the 1982 Asbestos-in-Schools regulations.

PAGE 38

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

...

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

PAGE 39

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

...

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from

receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds. The Owner shall have the power to adjust and settle any loss with the insurers unless one of the parties in interest shall object thereto in writing within five (5) days after the occurrence of the loss. Should any party in interest object within the time period set forth above, any dispute with respect thereto shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

...

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

...

§ 12.2.2.1 In addition to the Contractor's obligations under ~~Section 3.5,~~ Sections 3.5 and 12.2.1, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

PAGE 40

The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice~~ State of Georgia, without regard to its conflict of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

...

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

...

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

PAGE 41

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

...

§ 13.4.7 Where the Contract Documents require that the Work or any portion thereof be inspected, tested, or approved, and when the Contractor believes that the Work or such portion is ready therefore, the Contractor shall give timely notice of the same to the Architect. However, should any part of the Work requiring inspection, testing, or approval not be in readiness, the Contractor shall pay all salaries, professional fees and travel expenses as applicable for the persons inconvenienced by the Contractor's inaccurate notice.

...

Payments due and unpaid under the Contract Documents shall ~~bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ not bear interest.

...

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

...

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract ~~Documents;~~ or Documents

...

- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

...

PAGE 42

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

repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than ~~100 percent~~ one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit ~~on Work not executed, and costs incurred by reason of such termination, as to the portion of the Work which was installed, performed and/or stored on the site and accepted by the Owner. The Contractor shall not be entitled to recover consequential damages, profit or overhead for that portion of the Work or the Contract which was not performed.~~

...

§ 14.1.4 If the Work is stopped for a period of ~~60~~ sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper ~~materials;~~ materials to complete the Work in a timely fashion;

...

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

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

PAGE 43

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;~~and~~

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, unless directed otherwise by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase ~~orders; orders and enter into no further subcontracts,~~ rental agreements, and/or purchase orders;

...

.4 settled all outstanding liabilities and all claims arising out of the termination of subcontracts and purchase orders;

...

.5 as directed by the Owner, assign to the Owner all of the Contractor's right, title, and interest under any subcontracts and purchase orders for the Work; and

...

.6 as directed by the Owner, transfer title and deliver to the Owner the fabricated or unfabricated parts of the Work in progress, completed Work, supplies, and other materials produced as a part of, or acquired in connection with, the performance of the Work, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Owner.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; executed or performed and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.
termination. The Contractor shall submit to the Owner, within sixty (60) days of the receipt of the written notice of termination, its itemized costs for unpaid Work together with all costs of Work in progress and materials and equipment rented or ordered prior to the notice of termination and which were not terminable as required by the Owner. The Owner shall, within sixty (60) days of its receipt of such itemized costs, pay the Contractor for such costs, together with an appropriate pro-rata portion of the Contractor's overhead and profit which, unless termination occurs within sixty (60) days after issuance of the Notice to Proceed, shall not exceed fifteen percent (15%) of all field costs incurred by the Contractor. Under no circumstances shall the costs used to calculate the pro-rata portion of the Contractor's overhead and profit include any home office overhead or administrative costs.

...

The Owner and Contractor § 15.1.2.1 As between the Owner and the Contractor:

...

shall commence all Claims and causes of action against the other and arising out of, 1 as to acts or failures to act occurring prior to the date of Substantial Completion, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than such date of Substantial Completion;

PAGE 44

or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.2, 2 as to acts or failures to act occurring subsequent to the date of Substantial Completion and prior to the issuance of final payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than such date of final payment; and, 3 as to acts or failures to act occurring after the date of final payment, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Section 3.5, the date of any correction of the Work or the

failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation the Contractor or the Owner, whichever occurs last.

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 24 ~~twenty-one (21)~~ days after occurrence of the event giving rise to such Claim or within 24 ~~twenty-one (21)~~ days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later~~ later, except that Claims under Section 15.1.8 shall follow the procedures and be governed by the time limits set forth in such Section.

...

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

...

~~**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker. In no event shall either party initiate litigation prior to the achievement of Final Completion.~~

...

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

...

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

...

§ 15.1.6.2 ~~If adverse~~ **Bad Weather**

...

~~weather conditions are the basis~~ **§ 15.1.6.2.1** Completion time will not be extended for normal bad weather. The time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors. For the purposes of this Contract, the Contractor agrees that he may expect to lose a TOTAL number of calendar days between the "start-of-work" date and the "building enclosed date" due to weather in accordance with the following: January, 22 days; February, 16 days; March, 11 days; April, 7 days; May, 4 days; June, 6 days; July, 8 days; August, 6 days; September, 4 days; October, 5 days; November, 9 days; December, 15 days.

...

for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal. § 15.1.6.2.2 The Contractor agrees that, for the purpose of this Contract, a “day lost to weather” is a calendar day in which either (1) precipitation exceeds 0.10 inches or (2) the average hourly daytime temperature failed to exceed 40 degrees Fahrenheit, unless the maximum temperature exceed 50 degrees Fahrenheit, in each case as averaged from three local weather stations over the same period of time. This is the same source of data used to determine normal weather losses.

...

for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. § 15.1.6.2.3 If the aggregate number of calendar days (not on an individual, month-to-month basis), prorated for the “start-of-work” and “building enclosed” months, lost to weather from the “start-of-work date” to the “building enclosed date” exceeds the total aggregate days to be expected from the same period as detailed in Section 15.1.6.2.1, the time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension will be made for days or bad weather occurring after the building is enclosed. No reduction in the Contract Time shall be imposed if the total days actually lost to weather is less than the total to have been expected during the same period. For the avoidance of doubt, it shall be the obligation of the Contractor to make and substantiate all Claims under this Section 15.1.6.2.

PAGE 45

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. The Contractor further acknowledges and agrees that none of the items specifically enumerated in Section 3.19 hereof constitute “consequential damages” or are otherwise included in this wavier.

...

§ 15.1.8 Remedies for Delay

...

§ 15.1.8.1 For delays within the Contractor’s control or which could have been anticipated by the Contractor, the Contractor shall not be entitled to any extension of the Contract Time nor any increase in the Contract Sum incurred on account of such delay, and the Contractor shall finish the Work in accordance with the Contract Documents.

...

§ 15.1.8.2 For delays to the Work caused by an event outside the control of the Contractor or the Owner including, (1) if such delay is thirty (30) days or less, the Contractor’s sole and exclusive remedy shall be an extension of the Contract Time and, (2) if such delay exceeds thirty (30) days, the Contractor’s sole and exclusive remedy shall be an extension of the Contract Time and an increase in the Contract Sum equal to the direct field costs and approved direct, job-related material and equipment costs which the Contractor could not reasonably avoid, incurred on account of the delay, beginning on the thirty-first (31st) day of such delay; provided, however, that the Contractor shall not be entitled to any extension of the Contractor Time or increase in the Contract Sum if such delay could have been reasonably anticipated by the Contractor. Any delays caused in part by the Owner and in part by the Contractor shall, to the extent not subject to the provisions of Section 15.1.8.1 above, shall be deemed concurrent delays and shall be subject to the provisions of this Section 15.1.8.2.

...

§ 15.1.8.3 For delays to the Work caused solely by the Owner, the Architect, or Separate Contractors, the Contractor’s sole and exclusive remedy against the Owner shall be an extension of the Contract Time and an

increase in the Contract Sum equal to the direct field costs and approved direct, job-related material and equipment costs which the Contractor could not reasonably avoid, incurred on account of such delay.

...

§ 15.1.8.4 Under no circumstances in which a delay has occurred will the Contractor be entitled to any indirect field or home overhead costs, including home office overhead, or any costs which result from any subsequent acceleration or recovery of the Work, excepts as specifically provided for in Section 3.10.4.

...

§ 15.1.8.5 The Contractor and the Owner acknowledge that damages arising from unreasonable and unforeseen 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 complete the project. The Contractor and the Owner acknowledge that the Project is such a project. Therefore, the parties establish the procedures set forth in this Section 15.1.8 and elsewhere in this Article 15 as the exclusive procedures for fully and finally resolving any and all damages to the Contractor, its Subcontractors, and/or any other person who may claim under and/or through them, of every nature, type, and kind, arising in whole or in part from such delays, disruptions, interferences, hindrances, and/or accelerations.

PAGE 46

§ 15.1.8.6 If the 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 of the Work or any portion thereof (other than bad weather, which shall be governed by Section 15.1.6.2), the Contractor shall provide written notice thereof to the Architect and the Owner no later than three (3) days after first encountering the issue, event, condition, circumstance, and/or cause. The notice shall describe the issue or event in reasonable detail, identify when the issue or event began and the cause or reason therefore, and set forth the recovery or remediation plan and a preliminary timeline therefore. The Contractor shall also raise the issue, event, condition, circumstance, and/or cause of a perceived and/or actual delay, disruption, interference, hindrance, and/or acceleration at the first Project meeting with the Owner and Architect 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.

...

§ 15.1.8.7 Within three (3) days of the ending of the issue, event, condition, circumstance, and/or cause referred to in Section 15.1.8.6, the Contractor shall provide written notice to the Architect and the Owner notifying them of the date on which the issue, event, condition, circumstance, and/or cause ended. If the Contractor fails to provide the notice, the Architect or the Owner may provide the notice to the Contractor.

...

§ 15.1.8.8 Within thirty (30) days of a notice being issued by the Contractor or the Owner pursuant to Section 15.1.8.7, if the Contractor contends that the issue, event, condition, circumstance, and/or cause entitles the Contractor to an adjustment in the Contract Sum and/or Contract Time, then the Contractor shall prepare and submit a Claim to the Architect and the Owner. Should the Contractor fail or refuse to submit a Claim within such time period and/or fail or refuse to comply with the notice and other requirements of this Section 15.1.8, the Contractor admits that it would be depriving the Owner of an opportunity to timely mitigate the issue, event, circumstance, condition and/or cause. As such, the Contractor's failure and/or refusal to follow the requirements of this Section 15.1.8 are an admission that the Contractor is not entitled to any adjustment in the Contract Sum and/or Contract Time, and the Contractor accordingly waives, relinquishes and releases any and all Claims in connection therewith.

...

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

...

§ 15.2.2 The Initial Decision Maker will review Claims and within ~~ten~~ thirty (30) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

...

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

...

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

...

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

PAGE 47

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Owner disagrees with the Initial Decision Maker's decision, the disagreeing party shall notify the other party and the Architect of its disagreement in writing. Thereafter, either party may demand that the claim be mediated in accordance with Section 15.3. The mediation shall not take place until after Substantial Completion is achieved. The mediation of all Claims in accordance with Section 15.3 is a prerequisite to litigation.~~

...

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

...

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

...

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

...

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction ~~thereof.~~thereof, subject to the approval of the Owner's Board of Education and/or Superintendent as may be applicable.

...

§ 15.4 ~~Arbitration~~Litigation

...

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. dispute resolution proceedings set forth in Sections 15.2 and 15.3 have been completed and a Claim is still unresolved, then (and only then) shall the Contractor or the Owner file a~~

...

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based~~

on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. lawsuit with the Superior Court of Cobb County, Georgia. However, in no event can the lawsuit be filed before Final Completion.

...

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Contractor and the Owner hereby agree that any lawsuit arising out of or

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

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§ 15.4.4 Consolidation or Joinder

...

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). the Superior Court of Cobb County, Georgia, irrevocably submit to the personal jurisdiction of such court and the laying of venue therein, and

...

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

PAGE 48

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

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Certification of Document's Authenticity

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I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:53:35 ET on 03/16/2022 under Order No. 2114271416 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)