

CONTRACTOR'S QUALIFICATION STATEMENT

SUBMITTED TO:

Ross County Planning & Development
ATTN: Bainbridge Village Administrator
15 N Paint Street, Suite 200
Chillicothe, Ohio 45601

NAME OF PROJECT: Bainbridge Streetscape Project

SUBMITTED BY: _____

CONTRACTOR PROJECT CONTACT NAME: _____

ADDRESS: _____

EMAIL: _____

PHONE: _____

PRINCIPAL OFFICE: _____

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

#	Question	Response
1 - Organization		
1.1	How many years has your organization been in business as a Contractor in the construction industry?	
1.2	How many years has your organization been in business under its present business name?	
1.2.1	Under what other or former names has your organization operated?	
1.3	Is your organization a corporation? If yes, answer #1.3.1 – 1.3.6	
1.3.1	Date of incorporation	

1.3.2	State of incorporation	
1.3.3	President's name	
1.3.4	Vice President's name(s)	
1.3.5	Secretary's name	
1.3.6	Treasurer's name	
1.4	Is your organization a partnership? If yes, answer #1.4.1 – 1.4.3	
1.4.1	Date of organization	
1.4.2	Type of partnership (if applicable)	
1.4.3	Name(s) of general partner(s)	
1.5	Is your organization individually owned? If yes, answer #1.5.1 – 1.5.2	
1.5.1	Date of organization	
1.5.2	Name of owner	

1.6	If the form of your organization is other than those listed above, describe it and name the principals.	
2 - Licensing		
2.1	List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.	
2.2	List jurisdictions in which your organization's partnership or trade name is filed.	
2.3	List any suspension or revocations of any professional license of any director, officer, owner, or managerial employees of your organization, to the extent that any work to be performed on this Project is within the field of such licensed profession.	
3 - Financing: After bid opening, within 24 hours of a request made by the Owner or Design Professional, the apparent low Bidder and any other Bidder must submit additional financial information as requested.		
4 - References		

4.1	Trade References	
4.2	Bank References	
4.3	Surety – name of bonding company	
4.4	Surety – name and address of agent	
5 – Claims and Organization History		
5.1	Attach your organization’s record for both resolved and unresolved findings of the Auditor of the State of Ohio for recovery as defined in Section 9.24 of the Ohio Revised Code. If none, state “none”.	
5.2	Does your organization participate in a drug-free workplace program?	
5.3	Has your organization ever failed to complete any work or failed to complete any work by the substantial completion date, final completion date, or in a timely manner? If yes, attach details.	

5.4	Within the last five years, has your organization or any of its officers prosecuted any Claims, had any Claims prosecuted against it or them, or been involved in or is currently involved in any mediation or arbitration proceedings or lawsuits related to any construction project, or has any judgments or awards outstanding against it or them? If the answer is yes, please attach the details for each Claim, including the names and telephone numbers of the persons who are parties, the amount of the Claim, the type of Claim and basis for the Claim, and the outcome. Note: As used in this document “Claim” means a Claim initiated under the Contract Documents for a project or relating to the Work for a project, including Claims made against performance bonds secured by the Contractor on other construction projects.	
5.5	Within the last five years, has your organization received a citation, notice of violation, or other form of written violation relating to federal, state, and local laws, rules and regulations including but not limited to the Occupational Safety and Health Act, the Ohio Prevailing Wage laws, and Ohio ethics laws? If yes, please attach details and reason(s) for each instance and the outcome including any fines or penalties imposed.	
5.6	Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? If the answer is yes, please attach details for each instance, including the names and telephone numbers of the persons who are parties to the contract, and the reason(s) the contract was not completed.	
5.7	If any of the following members of your organization's management – president, chairman of the board, or any director – operates or has operated another construction company during the last five years, identify the member of management and the name of the construction company.	
5.8	If your organization is operating under a trade name registration with the Secretary of State for the State of Ohio, identify the entity for which the trade name is registered. If none, state “none.”	
5.9	If your organization is a division or wholly-owned subsidiary of another entity or has another relationship with another entity, identify the entity of which it is a division or wholly-owned subsidiary or with which it has another relationship and also identify the nature of the relationship. If none, state “not applicable.”	

5.10	List any projects within the previous five years where a public entity determined that your organization was not a responsible bidder, including the name of the public entity, the reasons given by the public entity, and an explanation thereof.	
6 - Experience		
6.1	List the categories of work that your organization normally performs with its own forces	
6.2	State average annual amount of construction work your organization has performed during the last five years	
6.3	State total amount of work in progress and under contract	
6.4	Describe the size and experience of your organization's work force and your equipment and facilities, in relation to your organization's ability to complete the Project successfully and on time.	
6.5	In the chart below, provide the following information for each contract your organization has had during the last five years, including current contracts, where the Contract Sum is/was 50% or more of the bid amount for this Project, including add alternates. Include details regarding timeliness of performance and quality of work. List the original contract price for each project, the amount of any change orders or cost overruns on each, and the reasons for the change orders or cost overruns, and your organization's record for complying with and meeting completion deadlines on construction projects. If there are more than ten of these contracts only provide information on the most recent ten contracts, including current contracts.	

Project/Scope of Work	Original Contract Sum	Amount of any change orders or cost overruns and reasons	Completion deadlines met?	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project/Scope of Work	Original Contract Sum	Amount of any change orders or cost overruns and reasons	Completion deadlines met?	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

6.6 In the chart below, provide the following information for each project your organization has had during the last five years, which your organization believes is of comparable or greater size and complexity than the Owner's project. If there are more than five of these projects, only provide information on the most recent five projects, including current projects.

Project and Scope of Work	Contract Sum	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project and Scope of Work	Contract Sum	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

6.7

In the chart below, list the construction education, training and construction experience for each person who will fill a management role on the Project, including without limitation the Project Executive, Project Engineer, Project Manager, and Project Superintendent. For each person listed, include with the other information, the last three projects on which the person worked and the name and telephone number of the design professional and the Owner. Attach a separate sheet if necessary, identifying the question number.

Name/Role	Education and Training	Project #1, Owner & A/E Contact, Telephone Number	Project #2, Owner & A/E Contact, Telephone Number	Project #3, Owner & A/E Contact, Telephone Number

Name/Role	Education and Training	Project #1, Owner & A/E Contact, Telephone Number	Project #2, Owner & A/E Contact, Telephone Number	Project #3, Owner & A/E Contact, Telephone Number

6.8

In the chart below, list construction projects your organization has in progress with an original Contract Sum of more than \$100,000.00, giving the name of project, owner and its telephone number, design professional and its telephone number, contract amount, percent complete and scheduled completion date. Attach a separate sheet if necessary, identifying the question number.

Project/Scope of Work	Contract Sum	Scheduled Completion Date	% Complete	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project/Scope of Work	Contract Sum	Scheduled Completion Date	% Complete	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Additional Criteria. The Owner, in its discretion, reserves the right to request additional information and documentation relating to the foregoing and related to any of the criteria listed in the Bidding and Contract Documents after the bid opening. The Owner may consider such information and documentation in determining which bid is **lowest and best**. The Owner, in its discretion, may consider and give such weight to any and all criteria as it deems appropriate.

Certification. The undersigned certifies for the reliance of the Owner that after diligent investigation, to the best of the undersigned's belief, the information provided with this Contractor's Qualification Statement is true, accurate and not misleading.

SIGNATURE _____

Dated at this ____ day of _____, 20__.

Name of Organization: _____

By: _____[PRINT NAME]

Signature: _____

Title: _____

_____, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

CONTRACTOR'S QUALIFICATION STATEMENT

CQS-
11

Subscribed and sworn before me this _____ day of _____ 20__.

Notary Public

My Commission Expires: _____

SEAL

CONTRACTOR'S PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C. § 5719.042)

State of Ohio

County of _____, ss:

_____, being first duly sworn, deposes and says that he is the
(Name)

_____ of _____ with offices located at
(Title) (Contractor)

_____, and as its duly
(Address of Contractor)

authorized representative, states that effective this _____ day of _____, 20____,

(Name of Contractor)

() is charged with delinquent personal property taxes on the general list of personal property as set forth below:

County

Amount (include total amount penalties and interest thereon)

_____ County \$ _____

_____ County \$ _____

_____ County \$ _____

() is not charged with delinquent personal property taxes on the general list of personal property in any Ohio county.

(Affiant)

Sworn to and subscribed before me by the above-named affiant this _____ day of _____, 20____.
The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

(Notary Public)

My commission expires

_____, 20____

**BID GUARANTY AND
CONTRACT BOND**
(O.R.C. § 153.571)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____ ("Contractor") as principal and _____
_____ as surety are hereby held and firmly bound unto the **Village of Bainbridge, Ohio**, as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on _____, 20__, to undertake the construction of the **Bainbridge Streetscape Project** ("Project"). The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive Alternates made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of _____ Dollars (\$_____). (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including add Alternates. Alternatively, if the blank is filled in the amount stated must not be less than the full amount of the bid including add Alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this _____ day of _____, 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has submitted a bid for work on the Project.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not-to-exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten (10) days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein.

Now also, if the said principal shall well and faithfully do and perform the things agreed by said principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; and surety shall indemnify the obligee against all damage suffered by failure of the principal to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract and surety further agrees and assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just claim, as well as for the obligee; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 20__.

PRINCIPAL

By: _____

Printed Name & Title: _____

SURETY

By: _____

Printed Name & Title: _____

Surety's Address: _____

Surety's Telephone Number: _____

Surety's Fax Number: _____

SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____

NOTE: The Contract Bond form that follows is to be used ONLY by a bidder that is awarded a contract and submits a form of bid guaranty other than the combined Bid Guaranty and Contract Bond with its bid. If a bidder submits a combined Bid Guaranty and Contract Bond, then the bid guaranty becomes the contract bond when the contract is awarded.

AIA Bid Bond or Payment and Performance Bond forms are not acceptable for this Project.

CONTRACT BOND
(O.R.C. § 153.57)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor"), as principal, and _____, as surety, are hereby held and firmly bound unto the **Village of Bainbridge, Ohio** ("Owner") as obligee, in the penal sum of _____ Dollars (\$), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the _____ day of _____, 20____, enter into a contract with the Owner for construction of the **Bainbridge Streetscape Project** ("Project"), which said contract is made a part of this bond the same as though set forth herein:

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 20____.

(PRINCIPAL)

By: _____

Printed Name & Title: _____

(SURETY)

By: _____

Printed Name & Title: _____

Surety's Address: _____

Surety's Telephone Number: _____

Surety's Fax Number: _____

NAME OF SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____



Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (owner's) name _____

Exact location of job/project _____

Name of job/project as it appears
on contract documentation _____

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate is purchased exempt of the tax for incorporation into:

A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	Real property under a construction contract with the United States government, its agencies, the state of Ohio, or an Ohio political subdivision;
The original construction of a sports facility under R.C. section 307.696;	A building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
A hospital facility entitled to exemption under R.C. section 140.08;	
A computer data center entitled to exemption under R.C. 122.175; ___ % exempt per OH Dept. of Development	A house of public worship or religious education;
A megaproject entitled to exemption as described in R.C. 5739.02(B)(13).	Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).
Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;	

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Subcontractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Owner/Contractee

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Political Subdivision

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

STATEMENT OF CLAIM FORM

Claim No. ____ for Contractor

1. Name of Contractor: _____

2. Date written claim given: _____.

3. Contractor's representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

4. General description of claim:

5. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-Contractor Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

6. Delay claims:

6.1 Date delay commenced: _____

6.2 Duration or expected duration of the delay, if known: _____

6.3 Apparent cause of the delay and part of critical path affected:

6.4 Expected impact of the delay and recommendations for minimizing such impact:

7. Additional compensation. Set forth in detail all additional compensation to which the Contractor believes it is entitled with respect to this claim:

8. Instructions for Completing the Statement of Claim Form ("Instructions"). The Instructions are incorporated in this Form.

9. Truth of Claim. By submitting this claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this State of Claim is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

CONTRACTOR: _____

By: _____

Name and Title: _____

Date: _____

CONTRACTOR'S ACKNOWLEDGMENT

State of _____,

County of _____, ss:

_____ first being sworn, states that after conscientious and thorough review, the statements made in attached Statement of Claim Form are complete and true to the best of his or her knowledge and belief.

Sworn to before me a notary public by _____ on _____, 20___. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE AND STATEMENT OF CLAIM FORM TO THE OWNER AND DESIGN PROFESSIONAL.

INSTRUCTIONS FOR COMPLETING THE STATEMENT OF CLAIM FORM

1. Completing the Statement of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Design Professional that the Contractor is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The Contractor acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Design Professional that the Contractor will be making a Claim and most often is incomplete.
2. If the space provided in the Claim Form is insufficient, the Contractor, as necessary to provide complete and detailed information, must attach pages to the Claim Form with the required information.
3. Paragraph 4. The Contractor must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The Contractor must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the Contractor's Work, the Contractor must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the Contractor believes result in constructive acceleration. The Contractor must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The Contractor acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the Contractor claims a slow response time on submittals caused a delay, the Contractor must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the Contractor claims it was delayed by another Contractor, the Contractor must identify the delaying Contractor, specifically what the delaying Contractor did or did not do that caused the delay, and then show the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the Contractor seeks an extension of time for unusually severe weather, the Contractor must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the Contractor provide specific recommendations on how to do so.
7. Paragraph 7. The Contractor must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the Contractor shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. By submitting this Claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this Claim Form is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

End of Instructions

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project:

Bainbridge Streetscape Project

Contract For:

General Contract

Owner:

Village of Bainbridge, Ohio

CONTRACTOR: [insert name and address]

The Design Professional hereby certifies that the Date for Substantial Completion of the Contractor's Work as set forth in the Owner-Contractor Agreement is:

(Insert Date for Substantial Completion of the Work)

The Design Professional hereby certifies that the Date for Substantial Completion in the Contractor's Agreement with the Owner (the "Agreement"), as extended by Change Orders and Claims submitted by the Contractor that have been Finally Resolved, as defined below, is:

1. Date for Substantial Completion in the Agreement (above):
2. Additional days added to Date for Substantial Completion by Change Order:
3. Additional days added by Claims that have been Finally Resolved:
4. Date for Substantial Completion in the Contract Adjusted by days under No. 2 and No. 3

"Finally Resolved" means that the Design Professional has made a decision (or declined to make a decision) on the Claim under the General Conditions and that any litigation regarding the Claim has been concluded.

The Design Professional certifies that the Contractor's Work to the best of the Design Professional's knowledge, information, and belief was Substantially Complete, as Substantial Completion is defined in the Contract Documents, on .

The Design Professional hereby certifies that the difference between (a) the Date for Substantial Completion adjusted by the days under No. 2 and No. 3 above and (b) the date the Contractor's Work was Substantially Complete is days.

NOTICES OF DELAY. The Design Professional hereby certifies that all "NOTICES OF DELAY" submitted by the Contractor and described in the General Conditions are attached to this Certificate. This certification is solely for the purpose of identifying all "NOTICES OF DELAY" submitted by the Contractor and is not intended to imply that any of these NOTICES OF DELAY were properly submitted in accordance with Contract Documents or are valid.

STATEMENT OF CLAIM FORMS. The Design Professional hereby certifies that all Statement of Claim Forms described in the General Conditions and submitted by the Contractor are attached to this Certificate. This certification is solely for the purpose of identifying all Statement of Claim Forms submitted by the Contractor and is not intended to imply that any of these Statement of Claim Forms were properly submitted in accordance with Contract Documents or are valid.

PUNCHLIST ITEMS. A list of items to be completed by the Contractor is attached to this Certificate. The failure to include items on this list does not change the responsibility of the Contractor to complete its Work in accordance with the Contract Documents. The Contractor shall complete all items on the Punchlist in accordance with the Contract Documents.

Security, maintenance, utilities, damage to the Work and insurance are the responsibility of the Owner and the Contractor based on their operations pursuant to final completion of the Work.

Copies of this Certificate were provided to the Contractor and the Owner on

Signature: _____

Date:

**CONTRACTOR'S AFFIDAVIT AND CERTIFICATION WITH LIST OF SUBCONTRACTORS
AND SUPPLIERS WITH ANY AMOUNTS WITHHELD**

PROJECT:

Bainbridge Streetscape Project

CONTRACTOR:

In Support of PAYMENT APPLICATION No.:

For the Period Through:

STATE OF _____ :
: SS,
COUNTY OF _____ :

The undersigned after first being sworn swears that a) all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment; b) set forth below is a complete list of its Subcontractors and Suppliers; and c) set forth below is a complete description of all amounts withheld from any Subcontractor or Supplier and the reason why. Attach additional sheets if necessary.

Typed or Printed Name of Subcontractor or Supplier	Address of Subcontractor or Supplier	Telephone Number of Subcontractor or Supplier

WITHHOLDINGS FROM SUBCONTRACTORS AND/OR SUPPLIERS:

Typed or Printed Name of Subcontractor or Supplier	Amount Withheld	Reason for Withholding

Moreover, Contractor certifies that, except for as set forth immediately above, Contractor has paid all of its subcontractors and suppliers who were due to be paid with the proceeds of the prior Application for Payment and Contractor acknowledges that Owner is relying upon such certification when paying Contractor the amount asked for in the payment application that this Affidavit and Certification supports.

CONTRACTOR: [insert name]

BY:

(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of _____.
The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

**CONTRACTOR'S WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Bainbridge Streetscape Project

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the **Village of Bainbridge, Ohio** (the "Owner") with which it has a contract for the Project.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the last Application for Payment to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me
this _____ day of _____.

The notarial act certified hereby is a jurat. An oath
or affirmation was administered to the signer with
regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS, SUPPLIERS
WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Bainbridge Streetscape Project

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the Contractor ("Contractor") with which it has a contract.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the Contractor's last Application for Payment and to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Contractor, the Contractor's surety, and/or the **Village of Bainbridge, Ohio** (the "Owner"), for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Owner. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors and suppliers through the date of the Contractor's last Application for Payment who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Contractor, the Contractor's surety, and/or the Owner, except for any Claims made by properly and timely submitting a Statement of Claim form a copy of which has been delivered to the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the Contractor with respect to the Contractor's current Application for Payment, it shall, if applicable, immediately execute and cause to be filed or recorded a legally effective Satisfaction of Lien, Release of Lien, or any other legal instrument necessary to cause prejudicial dismissal and release of any lien, encumbrance, lawsuit, or other claim against the Contractor, the Contractor's surety and the Owner, the property where the Project is located, and/or any surety bond posted by the Contractor or the Owner to the extent of the foresaid payment. Upon request of the Contractor, the undersigned shall provide proof of having complied with this obligation.

This Affidavit is for the benefit of, and may be relied upon by, the Contractor, the Contractor's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial act
certified hereby is a jurat. An oath or affirmation was administered
to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

**CONTRACTOR'S FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Bainbridge Streetscape Project

In consideration for payment received from the Village of Bainbridge, Ohio (the "Owner") in the amount requested in Contractor's Final Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned Contractor hereby waives and releases any rights it has or may have to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS, SUPPLIERS
FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: Bainbridge Streetscape Project

Upon receipt of payment in the amount of \$ _____ received from _____ ("Prime Contractor") the undersigned Subcontractor or Supplier waives and relinquishes all rights of lien or claim that it may have either in law or equity (including but not limited to rights under Ohio Mechanics' Lien Laws, O.R.C. 1311.01 *et seq.*) with respect to the construction project known as **Bainbridge Streetscape Project** ("the Project"), for all labor, all equipment, and/or materials provided to or on behalf of the Project throughout its entirety, except for claims previously made pursuant to the agreement in place between Subcontractor or Supplier and Prime Contractor, and any lien previously perfected and remaining unreleased.

The undersigned Subcontractor or Supplier acknowledges and agrees that such payment represents final payment in full for all such labor, equipment and/or materials including retainage, if any, and that the Subcontractor or Supplier has completed its work on the Project. The undersigned Subcontractor or Supplier certifies that all amounts have been paid by the Subcontractor or Supplier for all work or materials furnished by others to the Subcontractor or Supplier for which the Subcontractor or Supplier has received previous payments from Prime Contractor, and Subcontractor or Supplier acknowledges that Prime Contractor is now making payment to the Subcontractor or Supplier in reliance upon such certification. The undersigned Subcontractor or Supplier further certifies that it will pay all amounts lawfully owing for all work or materials furnished by others to the Subcontractor or Supplier with the payment received from Contractor referenced herein.

This Affidavit is for the benefit of, and may be relied upon by, the Contractor, the Contractor's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this Affidavit to be executed by its authorized representative as of the date indicated below.

THE INDIVIDUAL SIGNING THIS AFFIDAVIT REPRESENTS THAT HE/SHE IS AUTHORIZED TO DO SO.

SUBCONTRACTOR OR SUPPLIER:

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____, 20____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

Prevailing Wage Rates

(To be provided by Owner's Prevailing Wage Coordinator)

PRE-BID SUBSTITUTION FORM

Note. Certain brands of material or apparatus are specified. Each bid will be based on these brands, which may be referred to in the Contract Documents as Standards. The use of another brand (referred to as a substitution or proposed equal in the Contract Documents, when a bidder or the contractor seeks to have a different brand of material or apparatus than that specified approved by the Owner for use in the Project) may be requested as provided in the Instructions to Bidders.

The detailed procedures for submitting substitutions are set forth in Paragraph J of the Instructions to Bidders.

Specification Section	Brand or Name Specified	Proposed Substitution

CONTRACTOR'S PAYMENT APPLICATION CHECKLIST

THE CONTRACTOR MUST COMPLETE THIS CHECKLIST AND SUBMIT IT TO THE DESIGN PROFESSIONAL WITH ITS PAYMENT APPLICATION AND ALL REQUIRED DOCUMENTATION.

1. Contractor's Name: _____
2. Name, title, and telephone and fax numbers of Contractor's representative to contact regarding the Payment Application and required documentation:
Name: _____ Title: _____
Office Telephone No.: (____) _____ FAX No.: (____) _____
3. Payment Application Number and Date:
No. _____ Date: _____, 20____
4. The following is a list of required documentation that must accompany its Payment Application. The Contractor certifies that it has submitted the documentation listed below with its Payment Application. If the Contractor cannot do so, the Contractor should explain why in Paragraph 5. Such explanations shall not excuse the Contractor from the requirements for submitting this documentation.
 - _____ .1 Five (5) copies of a properly completed and executed Application for Payment with a properly completed and executed Schedule of Values attached to each;
 - _____ .2 Properly Completed Contractor's Affidavit with List of Subcontractors and Suppliers and Any Amounts Withheld;
 - _____ .3 Contractor's Waiver and Release Agreement (beginning with the second Application for Payment);
 - _____ .4 For each of its Subcontractors and Suppliers, a Subcontractor's – Supplier's Waiver and Release Agreement (beginning with the second Application for Payment);
 - _____ .5 Schedule of all materials and equipment stored on-site;
 - _____ .6 For materials and equipment stored off-site:
 - _____ A list of the materials and equipment consigned and stored off-site in connection with the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices and reasons why the materials and equipment cannot be delivered to the site;
 - _____ Certification that all items have been tagged for delivery to the Project and that they will not be used for any other purpose;
 - _____ A letter from the Contractor's surety bonding company indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of its responsibility to complete the facility;
 - _____ Evidence of adequate insurance covering the material and equipment in storage, which shall name the Owner as additional insured;

- ☐ Evidence that the Design Professional has visited the Contractor's place of storage and found that all the materials and equipment set forth in the payment request and represented to be stored off-site are stored at the place of storage (any costs incurred by the Design Professional to inspect material and equipment in off-site storage shall be paid by the Contractor); and
- ☐ Itemization of the materials and equipment and their cost, which were approved on previous Pay Applications and which remain in off-site storage.
- ☐ .7 Other documentation or information required by the Contract Documents or by the Design Professional or Owner.

5. Reason why required documentation is not submitted:

NOTE: The failure to submit required documentation, regardless of the reason, may result in non-payment, partial payment, and/or late payment.

Signature

Printed Name

Date

DESIGN PROFESSIONAL'S REVIEW

- ☐ Checklist and documentation complete.
- ☐ Checklist and documentation incomplete.

Signature

Printed Name

Date

ACGP MINORITY HIRING GOAL COMPLIANCE PLAN COVER PAGE

Project Name: Bainbridge Streetscape Project

The established minority hiring goal:

Contractor shall make a good faith to employ minority persons in the same percentage as the average percentage of minority persons who reside in the county in which the project is located and any contiguous Ohio counties.

Contractor's Name _____

Contact Person: _____ Telephone No. _____

Fax No. _____ E-mail Address: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Total Base Bid Price \$ _____

Minority employment \$ _____ %

Check one:

☐ Will Meet Minority Hiring Goal

☐ Will Not Meet Minority Hiring Goal

THIS PLAN MUST BE SIGNED AND SUBMITTED WITH YOUR BID
I certify that the information included in this ACGP Minority Hiring Goal Compliance Plan is true and complete to the best of my knowledge and belief. I further understand and agree that this ACGP Minority Hiring Goal Compliance Plan shall become part of my Contract for the Project. _____ Name and Title of Authorized Representative (Print) _____ Signature _____ Date _____

ACGP MINORITY HIRING GOAL COMPLIANCE PLAN COVER PAGE

REQUIREMENTS FOR BIDS, PROPOSALS, QUALIFICATIONS, AND SUBMISSIONS

Each bid submittal shall include the following documents:

(A) If ACGP minority hiring goal compliance goals will be met:

1) Subcontractor Utilization Plan

(B) If ACGP minority hiring goal compliance goals will not be met:

1) Summary of good faith efforts made to meet goal

2) Subcontractor Utilization Plan

3) Documentation of good faith efforts made

COUNTY DEMOGRAPHICS

County (and contiguous counties)	Black	American Indian	Asian	Hispanic/Latino
Adams	0.6%	0.6%	0.4%	1.0%
Brown	1.0%	0.3%	0.4%	1.3%
Highland	1.5%	0.4%	0.4%	1.3%
Pike	1.3%	0.7%	0.3%	1.1%
Scioto	2.9%	0.6%	0.5%	1.6%
Athens	2.9%	0.4%	2.9%	2.3%
Meigs	1.0%	0.4%	0.3%	1.1%
Vinton	0.6%	0.5%	0.3%	1.1%
Hocking	0.8%	0.4%	0.5%	1.0%
Perry	0.7%	0.4%	0.3%	1.0%
Morgan	3.0%	0.4%	0.2%	1.2%
Washington	1.4%	0.3%	0.8%	1.3%
Belmont	4.6%	0.3%	0.5%	1.4%
Jefferson	5.5%	0.3%	0.6%	2.0%
Harrison	2.0%	0.3%	0.3%	1.2%
Guernsey	1.7%	0.4%	0.5%	1.4%
Noble	3.3%	0.4%	0.3%	1.4%
Monroe	1.0%	0.2%	0.3%	0.6%
Brown	1.0%	0.3%	0.4%	1.3%
Clermont	2.2%	0.2%	1.5%	2.6%
Warren	3.9%	0.2%	7.5%	3.6%
Clinton	2.2%	0.4%	0.7%	2.4%
Highland	1.5%	0.4%	0.4%	1.3%
Adams	0.6%	0.6%	0.4%	1.0%
Gallia	2.2%	0.5%	0.7%	1.2%
Lawrence	2.3%	0.3%	0.5%	1.2%
Jackson	0.8%	0.4%	0.5%	1.0%
Vinton	0.6%	0.5%	0.3%	1.1%
Meigs	1.0%	0.4%	0.3%	1.1%
Highland	1.5%	0.4%	0.4%	1.3%
Brown	1.0%	0.3%	0.4%	1.3%
Clinton	2.2%	0.4%	0.7%	2.4%
Fayette	2.6%	0.3%	1.3%	2.5%
Ross	5.7%	0.4%	0.6%	1.5%
Pike	1.3%	0.7%	0.3%	1.1%

Adams	0.6%	0.6%	0.4%	1.0%
Hocking	0.8%	0.4%	0.5%	1.0%
Ross	5.7%	0.4%	0.6%	1.5%
Pickaway	4.0%	0.3%	0.6%	2.1%
Fairfield	10.9%	0.3%	3.2%	2.9%
Perry	0.7%	0.4%	0.3%	1.0%
Athens	2.9%	0.4%	2.9%	2.3%
Vinton	0.6%	0.5%	0.3%	1.1%
Jackson	0.8%	0.4%	0.5%	1.0%
Lawrence	2.3%	0.3%	0.5%	1.2%
Scioto	2.9%	0.6%	0.5%	1.6%
Pike	1.3%	0.7%	0.3%	1.1%
Ross	5.7%	0.4%	0.6%	1.5%
Vinton	0.6%	0.5%	0.3%	1.1%
Gallia	2.2%	0.5%	0.7%	1.2%
Monroe	1.0%	0.2%	0.3%	0.6%
Belmont	4.6%	0.3%	0.5%	1.4%
Noble	3.3%	0.4%	0.3%	1.4%
Washington	1.4%	0.3%	0.8%	1.3%
Morgan	3.0%	0.4%	0.2%	1.2%
Washington	1.4%	0.3%	0.8%	1.3%
Athens	2.9%	0.4%	2.9%	2.3%
Perry	0.7%	0.4%	0.3%	1.0%
Muskingum	3.9%	0.3%	0.5%	1.4%
Noble	3.3%	0.4%	0.3%	1.4%
Ross	5.7%	0.4%	0.6%	1.5%
Pike	1.3%	0.7%	0.3%	1.1%
Highland	1.5%	0.4%	0.4%	1.3%
Fayette	2.6%	0.3%	1.3%	2.5%
Pickaway	4.0%	0.3%	0.6%	2.1%
Hocking	0.8%	0.4%	0.5%	1.0%
Vinton	0.6%	0.5%	0.3%	1.1%
Jackson	0.8%	0.4%	0.5%	1.0%
Vinton	0.6%	0.5%	0.3%	1.1%
Jackson	0.8%	0.4%	0.5%	1.0%
Ross	5.7%	0.4%	0.6%	1.5%
Hocking	0.8%	0.4%	0.5%	1.0%
Athens	2.9%	0.4%	2.9%	2.3%
Meigs	1.0%	0.4%	0.3%	1.1%
Gallia	2.2%	0.5%	0.7%	1.2%



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL FORM.

for the following PROJECT:

(Name and location or address)

Bainbridge Streetscape Project

Village of Bainbridge, Ohio

THE OWNER:

(Name, legal status and address)

Village of Bainbridge, Ohio

113 ½ Dewey Street

Bainbridge, Ohio 45612

THE ARCHITECT:

(Name, legal status and address)

American Structurepoint, Inc.

2550 Corporate Exchange Dr., Ste. 300

Columbus, Ohio 43231

TABLE OF ARTICLES

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

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

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User Notes:

(3B9ADA3A)

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 The definitions in this Section 1.1 shall apply throughout the Contract Documents.

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, paperwork, reports, documentation, other requirements, 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 Architect unless another person is identified in writing.

§ 1.1.9 Finally Resolved

~~the Agreement to render initial decisions on Claims~~ Finally Resolved means that the Initial Decision Maker has made a decision on a Claim under Section 15.2.6.1 of the General Conditions and that any litigation regarding the Claim has been concluded.

§ 1.1.10 Claim

~~in accordance~~ Claim is defined in Section 15.1.1 of these General Conditions.

§ 1.1.11 Statement of Claim Form

Statement of Claim Form means the Statement of Claim Form included with the Project Manual.

§ 1.1.12 Separate Contractor

~~Section 15.2.~~ Separate Contractor is defined in Section 6.1.1 of these General Conditions.

~~The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ **§ 1.1.13 Standard of Care** The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by experienced contractors and working in the same or similar locality under the same or similar circumstances. Contractor shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Contractor whether or not expressly shown or described. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; all and performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.1.2 In the event of inconsistencies within or between the Contract Documents, the Contractor must provide the better quality or greater quantity of Work and must comply with the stricter requirements.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their Ownership of the 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 shall be as provided in the Owner-Architect Agreement. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 ownership of the Instruments of Service.~~

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 ~~Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.~~ Notices, Requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served; forwarded by expedited messenger service; sent by facsimile transmission; sent by electronic

§ 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 mail with delivery confirmation; or be given by registered or certified mail, return receipt requested, postage prepaid, and address by given written notice hereunder.~~ All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by electronic mail or facsimile transmission, upon the expiration of 24 hours after the transmission is sent.

§ 1.7 Digital Data Use and Transmission

~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on, If the parties intend to transmit Instruments of Service or any other information or documentation in digital form-form, they shall endeavor to establish necessary protocols governing such transmissions, unless already provided in the Agreement or the Contract Documents.~~

§ 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 ~~written 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.

§ 1.9 Preconstruction Conference

Before any Work at the Site is started, a conference attended by the Owner, Contractor, Architect, and others as appropriate may be held to establish a working understanding among the parties as to the Work and to discuss the Submittal Schedule, Construction Schedule, and Schedule of Values, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

§ 1.10 Initial Acceptance of Schedules

At least 10 days before submission of the first Application for Payment a conference attended by a Contractor, Architect, and others as appropriate will be held to review for acceptability to the Architect the schedules submitted in accordance with the Contract Documents, including a Submittal Schedule, Construction Schedule, and Schedule of Values. The Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Contractor until acceptable schedules are submitted to the Architect and Owner.

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. may designate in writing a representative. The Owner's representative shall have such authority only as is expressly authorized by the Owner's legislative body and as is permitted under the law of the State of Ohio. The Contractor is responsible for determining the limits of that authority.

§ 2.1.2 The Owner shall furnish to the Contractor, may prepare a Notice of Commencement for the Project, as required by the Ohio Revised Code and shall furnish to the Contractor a copy of the Notice of Commencement for the Project, 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. request.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements. The Owner shall complete the certificate(s) of available resources required by the Ohio Revised Code as evidence of available funds 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. [Not Used.]

§ 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. [Not Used.]

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 to the Contractor 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. All security related information shall be automatically deemed confidential.

§ 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. initial plan approvals, easements, or assessments.

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

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

§ 2.3.4 ~~The Owner shall~~ To the extent necessary for the Work and as requested by the Contractor, the Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, and except for such reliance on “technical data,” the Contractor shall not rely upon or make any claim against the Owner or Architect with respect to: (1) the completeness of such reports and drawings for the Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or (2) other data, interpretation, opinions, and information contained in such reports or shown or indicated in such drawings; or (3) any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which the Owner does not warrant.

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

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

§ 2.4 Owner’s Right to Stop the Work

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

§ 2.5 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ~~a ten-day period~~ two business days after receipt of notice from the Owner to commence ~~and continue~~ correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s or thereafter proceed without interruption to correct such default or neglect within fifteen days of such notice, the Owner, without prejudice to its other remedies, may correct such deficiencies. If such default or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof. In all such cases of default or neglect, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs arising out of or related to the investigation and correction of such deficiencies, including Owner’s attorneys’ and consultants’ fees and expenses and other expenses and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If current and future payments due the Contractor are not sufficient to cover such amounts, the

Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the ~~Contract Documents~~ Documents and shall comply with all rules, regulations, and policies of the Owner (available upon request) and all applicable federal, State, and local codes, statutes, ordinances, and regulations in the performance of the Work on the Project.

§ 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 Agreement~~ by the Contractor is a representation that the Contractor has visited the site, ~~become generally~~ thoroughly investigated the entire site and surrounding area, including existing buildings, if any, location, condition, and layout of the site and observable utility locations, ~~become thoroughly~~ become thoroughly familiar with local conditions under which the Work is to be performed, including the generally occurring climatic conditions and carefully correlated personal observations and other information with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, ~~Work and in addition to the reviews required by the Instructions to Bidders and by these General Conditions,~~ 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, 2.3.4. In addition, prior to performing each portion of its Work, the Contractor 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 it, including the Work of the other contractors. The obligations of this Section 3.2.2 are for the purposes of facilitating construction by the Contractor, determining that the Work is constructible, determining if the Work of the Contractor is coordinated in the Contract Documents with the work of any other contractors, and for verifying that field conditions, including the work of other contractors, are consistent with the information in the Contract Documents and ready for the Work. Contractor shall promptly report to the Architect ~~any errors, inconsistencies and Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

§ 3.2.3 ~~The Contractor is not required to ascertain that the Contract Documents are in accordance~~ Additionally, prior to performing each portion of the Work, the Contractor shall have a competent person review the Contract Documents for compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly and the Contractor shall immediately report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall ~~submit~~ make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, if applicable, 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, necessary skill and attention to complete the Work in accordance with the Contract Documents. 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 Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and except as stated below, shall be fully and 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 not proceed with that portion of the Work without further written instructions from the Architect. The Contractor 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. -The Contractor shall immediately upon entering the Project for the purpose of beginning work, locate all general reference points and take such action as necessary to prevent their destruction. The Contractor shall lay out its own work and be responsible for all lines, elevations, and measurements of the building, demolition work, utilities, and any other Work to be executed by Contractor under the Contract Documents. The Contractor shall verify grades, lines, levels, and dimensions indicated on the drawings to confirm that the Project will be constructed in accordance with the Contract Documents and shall notify the Architect and Owner of errors or inconsistencies before commencing Work. The Contractor shall establish and maintain a permanent benchmark, batter boards, level, and grades and shall lay out the exact location of all walls, partitions, openings, etc. The Contractor shall employ experienced and competent personnel and exercise proper precautions to verify the figures shown on the drawings for laying out Work, and will be held responsible for any error resulting from a failure to exercise such precautions.

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

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

§ 3.3.4 The Contractor shall maintain readily accessible to the Architect and Owner at the Project site, the following documents all of which shall be "public records" within the meaning of the Ohio Public Records Act:

1. A set of Drawings and Specifications, as approved by the appropriate Authority Having Jurisdiction.

2. A neat and legible set of As-Built Drawings and Project Manuals on which:

The Contractor shall keep an accurate record of all approved changes made to the Drawings to show actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines. Any such changes shall be noted by Change Order Number and drawn neatly in a contrasting color; and

The Contractor shall also keep record of all changes to the Specifications. When Shop Drawings are used, the Contractor shall cross-reference the corresponding sheet numbers on the As-Built Drawings and sections of the Specification.

1. A daily log at the Project site in which it has recorded Project-related information, including, but not limited to, the weather, number of workers on site for each Contractor, identification of equipment, Work accomplished, problems encountered, and other similar relevant Project data;

1. As applicable to its Work, all Bulletins, Addenda, approved Shop Drawings, Product Data, Samples,

manufacturers' installation, operating and/or maintenance instructions or requirements, certificates, warranties, Change Orders, Change Directives, other Modifications, and complete back-up data for all Change Orders, Change Directives, and other Modifications;

1. All the Contractor's communications, including but not limited to letters, memoranda, e-mail, invoices, and bills of lading, arising out of or related to the Project with the Architect, Owner, and/or its subcontractors, materialmen, and/or employees;
1. The payroll reports for its employees and the employees of its Subcontractors working on the Project;
1. Claims for the Contractor's failure to comply with the Ohio Public Records Act, if applicable, shall be claims under Section 3.18.1; and
1. Any other forms required under the terms of the Agreement.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, 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~~ only assign competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks assigned. If the Owner or Architect deems any employee of the Contractor or a Subcontractor unsatisfactory, the Contractor will transfer or require its Subcontractor to transfer such employee from the Project immediately and replace or require the prompt replacement of such employee with a competent employee. The Owner, however, shall be under no obligation to do so.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. If the Contractor breaches any of its obligations under Section 3.5.1, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

§ 3.5.3 Except to the extent that the Contractor has notified the Architect in writing at least ten (10) days prior to the bid opening of specific problems with specified equipment or materials, the Contractor warrants that any equipment or materials used by the Contractor, including any equipment or materials selected from among the equipment or materials specified, will be fit for its intended purposes, compatible with the design intent, and, if the other contractors construct their work in accordance with the Contract Documents, constructible all without additional cost to the Owner. Such notice shall be conspicuously labeled at the top of the first page in not less

than twelve point type as follows: **“NOTICE OF PROBLEMS WITH SPECIFIED EQUIPMENT OR MATERIALS.”**

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use, commercial activity, 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. The Contractor acknowledges that the Owner is a political subdivision of the State of Ohio or tax exempt organization and is exempt from state sales, and use taxes. Upon written request, the Owner will provide the Contractor with any applicable certificates of exemption.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 ~~Unless-Except for the permits identified in 3.7.1.1, and unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections fees, inspections, tap fees, and capacity charges 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 the Agreement is executed. The Contractor or Subcontractor shall obtain, maintain, and pay for any license applicable to the Contractor’s or Subcontractor’s particular trade.~~

§ 3.7.1.1 The Owner or Owner’s representative shall secure the required structural, plumbing, HVAC, electrical plan approvals, and the National Pollutant Discharge Elimination System (“NPDES”) Storm Water general permit.

~~or negotiations concluded.~~ **§ 3.7.1.2** The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The Contractor shall schedule the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits. The Contractor shall pay for any reinspection required as a result of the Contractor’s failure to receive approval of its work. The Contractor shall give the Architect and Owner reasonable notice of the dates and times for all inspections.

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

§ 3.7.3 ~~If the Contractor~~ In addition to its other obligations under the Contract Documents, if the Contractor or any of its Subcontractors or Sub-subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements 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~~ Subject to Section 2.3.4 of these General Conditions, and except as provided herein, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, 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 shall not be chargeable against the allowance;~~ 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,~~ which shall be retained by the Owner. The Contractor shall timely seek and obtain a Change Order before incurring any costs in excess of an allowance.

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

§ 3.9 Superintendent & Construction Supervision

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not ~~change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~ replace the assigned Superintendent without the Owner's consent, except with another Superintendent who is satisfactory to the Owner. If the Contractor proposes to change the Superintendent, the Contractor must submit to the Architect a written request for the change, including the justification for the change, the name and qualifications for the proposed replacement, and the time frame within which the change is proposed to take place. The Contractor shall provide promptly any related additional information the Architect or Owner requests.

§ 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~~ within five (5) days of the date of any request from the Architect or the Owner to submit scheduling information, shall submit the scheduling information for its Work to the Architect and to the Owner in such form and in such detail as requested. The Contractor shall prepare the Construction Schedule within 10 days after the Effective Date. The Construction Schedule shall include and be consistent with any applicable Milestone Dates in the Contract Documents or otherwise provided by the Owner. The Contractor shall prepare all Construction Schedules in CPM format unless provided otherwise in the Contract Documents or otherwise agreed in writing by the Owner. Each major category of work shall be shown separately in the Construction Schedule with all the significant activities involved, showing durations of time, manpower requirements, and restraints. The Construction

Schedule is for the purpose of coordinating the timing, phasing, and sequence of the Work of the Contractor and shall not change or modify the Date for Substantial Completion or the Date for Final Completion. The Date for Substantial Completion or the Date for Final Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved, regardless of the dates in the Construction Schedule.

~~each portion.~~ 1 The Contractor shall update the Construction Schedule each month;
~~of the Work.~~ 2 The Construction Schedule shall be manpower loaded and shall include a schedule of the submission of Shop Drawings, Product Data, and Samples;
~~The schedule shall provide for the orderly progression of the Work.~~ 3 The Contractor shall, on a weekly basis, prepare and submit to the Architect and Owner a written report describing the activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a look-ahead projection of all activities to be started or finished in the upcoming two (2) weeks, including without limitation the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested;
~~to completion and shall not exceed time limits current under the Contract Documents.~~ 4 The float in the Construction Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion; and
~~The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~ 5 The Contractor's obligation to submit requested scheduling information is a material term of its Contract. If the Contractor fails to submit requested scheduling information in writing within five (5) days of a request for such information from the Architect or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to submit the requested information.

§ 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~~ prepare and submit the submittal schedule(s) 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.~~ Construction Schedule submitted to the Owner and Architect, provided that the Contractor shall comply with any orders under Section 3.10.4. However, preparation of such schedule shall not constitute a waiver of the Owner's rights under the Contract to have the Work completed by the contractual dates of Substantial and Final Completion.

1 Notice of Delays. The Contractor shall give the Owner and the Architect verbal notice of any delay affecting the Work within two (2) business days of the commencement of the delay. In addition, the Contractor shall give the Owner and Architect written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state at the top of the first page of the notice in twelve point type or larger that it is a "NOTICE OF DELAY." A notice of delay shall not constitute the submission of a Claim. The Contractor acknowledges and agrees that these notice provisions are material terms of the Contract Documents and give the Owner the opportunity to take action to minimize the cost and/or effect of delays.

§ 3.10.4 If the Architect or the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date of Substantial Completion, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, supervision, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to Substantially Complete its Work by its Date for Substantial Completion.

- .1 The Contractor shall not be entitled to adjustment in the Contract Sum in connection with the Corrective Measures required by the Owner pursuant to this Section 3.10.4, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents.

§ 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, maintain at the Project site for the Owner and the Architect the documents required by Section 3.3.4.~~ These shall be in electronic form or paper copy, available to the Architect and Owner, and shall be delivered to the Architect in the form requested by the Owner for submittal to the Owner upon completion of the Work as a record of the Work as constructed or earlier when required by the Contract Documents.

§ 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. Shop Drawings shall also include but are not limited to, fabrication, erection and setting Drawings, scheduled Drawings, manufacturer's scale Drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, performance, and technical data.

§ 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.

- .1 If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved by Change Order.
- .2 If the Contractor's Shop Drawings or its submittals do not contain sufficient information, and the Architect must perform more than two reviews with respect to any submittal, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of such additional reviews by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and expenses.

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

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written 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, a properly licensed design professional who shall comply with reasonable requirements of the Owner regarding qualifications and insurance and~~ 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~~ adequacy, accuracy, and completeness 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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

§ 3.12.11 Instructions. Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation and maintenance of each item of equipment furnished in a notebook submitted to the Architect for review and transmittal to the Owner. The instructions, as applicable, shall include, but may not be limited to, the following:

- .1 Any schematic piping and wiring diagrams;
- .2 Any valve charts and schedules;
- .3 Any lubrication charts and schedules;
- .4 Guides for troubleshooting;
- .5 Pertinent diagrams and maintenance instructions for all equipment;
- .6 Manufacturer's parts list;
- .7 Operating and maintenance instructions for all equipment;
- .8 Manufacturer's data on all equipment;

- .9 Any testing procedures for operating tests; and
- .10 Other instructions and materials as required by the Contract Documents.

The Contractor shall provide two bound copies of the above instruction books as well as electronic copies in PDF or other format acceptable to the Owner, on or before the Substantial Completion of its Work. The books shall describe the information to be covered clearly and in detail and shall be in form and content satisfactory to the Architect and the Owner.

§ 3.12.12 Testing Following Final Completion. The Contractor will participate in training sessions for the Owner's maintenance personnel. During the first twelve (12) months following Final Completion of each part of the Project, the Contractor (without additional compensation) will participate in tests scheduled by the Owner, which test the following building systems to the extent applicable to the Contractor's Work; air conditioning system (which shall be conducted during the first full summer following the completion of the Project or at such earlier time as scheduled by the Owner), heating system (which shall be conducted during the first full winter following the completion of the Project or at such earlier time as scheduled by the Owner), and such other systems, including the electrical system, plumbing system, fire protection system, and communications systems, as reasonably requested by the Owner. The Owner will be advised when the testing will be conducted and may observe the testing. It is intended that the testing be a comprehensive series of operation tests designed to determine whether the systems are fully operational in accordance with the requirements of the Contract Documents. If it appears that any of the systems, including equipment and software, do not conform to the requirements of the Contract Documents, the Contractor will remedy the defective and/or non-conforming work as provided in Section 12.2.2.1 of these General Conditions.

§ 3.12.13 Manufacturer's Instructions or Requirements. Without waiving, modifying, or relieving the Contractor from its other obligations under the Contract Documents, including its warranties and any performance specifications, the Contractor shall furnish and install its Work in accordance with any applicable manufacturer's instructions and requirements. Prior to installation, the Contractor shall review the manufacturer's instructions or requirements, and if there is a conflict between such instructions or requirements and the Drawings and/or Specifications, the Contractor shall request clarification from the Architect prior to commencing the Work.

§ 3.12.14 The Contractor shall furnish for each submission of Shop Drawings, a sufficient number of prints so the Architect can retain four (4) copies. Where the nature of the material being submitted is such that letter size sheets are a convenient method of presentation, such sheets shall be assembled in the form of booklets with covers showing the name of the job, the names of the Contractor and subcontractor or vendor, the location on the job and a list of the sheets contained. Do not submit complete catalogues with items checked for use as shop drawings.

§ 3.12.15 After review of the submittal, the Architect will return an original of each submission to the Contractor marked "approved" or "not approved" and shall furnish promptly one copy in either case to the Owner for information and reference purposes on the job. If marked "not approved," the Contractor shall resubmit showing corrections made. After the submission has been stamped "approved," the Contractor shall distribute all necessary prints to trades involved. No Shop Drawings shall be used if not stamped "approved" by the Architect. All work shall be done in accordance with approved Shop Drawings.

§ 3.12.16 Schedules, diagrams, cuts, catalogues, data, etc., as mentioned in this Section 3.12, shall be furnished in sufficient numbers so the Architect can retain four (4) copies and the Contractor will have the necessary number for its distribution. One copy of each of these shall be furnished to the Owner by the Architect for reference on the job and for its permanent records.

§ 3.12.17 All Contractors furnishing material or equipment where shop or setting drawings are required shall obtain measurements and observe conditions at the job and indicate on their drawings that such dimensions have been field measured. The Contractor shall affix its stamp of approval on the drawings as evidence they have been checked before submitting them to the Architect for approval. Where information from one Contractor is required by another before drawings can be made, that information shall be given in sufficient time to cause no delay on the part of either party.

§ 3.12.18 The Contractor shall maintain a separate complete clean set of all shop drawings, data, and correspondence pertinent to maintenance requirement. This complete file shall be submitted to the Owner upon Substantial Completion. Drawings shall contain all changes made during construction.

§ 3.12.19 The Contractor shall keep a complete record of all drawings including dates of issuance, receipt, and approval. A second set shall be maintained at the Project job site.

§ 3.12.20 When the Contractor requests a change in any item which will involve a change in related items or components, the Contractor requesting the change shall be responsible for, and pay all costs in connection with such changes. Changes shall be recorded on shop drawings.

§ 3.13 Use of Site

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

§ 3.13.1.1 Damage to road, features, or the grounds, resulting from hauling, storage of materials, or other activities connected with the Work, will be repaired by the Contractor at its expense to the satisfaction of the Architect.

§ 3.13.2 Signage. The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.3 Restricted Activities. Unless expressly permitted by the Contract Documents or by the Owner in writing, the Contractor shall not interfere with the Owner's ongoing operations, shall not permit any of its employees or its Subcontractor's or materialmen's employees to use any existing facilities on the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas, and shall not permit its employees or its Subcontractor's or materialmen's employees to bring any tobacco products, alcoholic beverages, controlled substances, or firearms onto the Project site or any other property owned or controlled by the Owner. Additionally, the Contractor shall not permit its employees or its Subcontractor's or materialmen's employees to use any headphones, radios, tape, or music players, or sound amplification equipment at or near the Project site.

§ 3.13.4 The Contractor shall conspicuously post notice of the prohibitions listed in the preceding subparagraphs at the Project site in the same locations as OSHA notices are required to be posted, and shall verbally inform all of the Contractor's employees and the employees of the Contractor's Subcontractors and materialmen, regardless of tier, of such prohibitions.

§ 3.14 Cutting and Patching

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

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

§ 3.14.3 Patching resulting from operations of any Contractor shall be performed by workers skilled in the trade being patched, and paid for by the Contractor causing such patching.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste

materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. At weekly intervals and as directed by the Owner, the Contractor shall clean up the job. The Contractor shall remove all discarded materials, rubbish, and debris from the premises, taking care to avoid scattering debris along the path of travel. The Contractor shall have a dumpster on the site so as to maintain clean and safe conditions throughout the duration of the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. The Architect's determination of the costs to be charged to the Contractor shall be final and binding.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor is responsible to provide necessary and proper facilities for such access and observation and to provide access to the Work in preparation and progress for special inspections required by the building department or authority having jurisdiction.

§ 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 such 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 the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or patent is discovered by, or made known to, the Contractor, patent, 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~~ indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and ~~agents~~ the officers, directors, partners, consultants, subcontractors, 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. claims (whether alleged or proven), demands, costs, losses, and/or damages, including but not limited to all fees and charges of architects, engineers, attorneys, and other professionals and all court, arbitration, or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, caused or alleged to have been caused by the Contractor's performance of the Work, including but not limited to the Contractor's negligent performance of the Work, or any breach of the Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

§ 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 Compliance with Demolition Laws

The Contractor will, at the Contractor's expense, fully comply with all statutes and regulations regarding notification and disposal of construction and demolition debris, including, without limitation, Ohio Revised Code Chapter 3714 and the regulations enacted thereunder.

§ 3.20 Underground Utility Facilities

§ 3.20.1 The Contractor, at least two (2) working days prior to commencing any construction in an area that may involve underground utility facilities, shall give notice to the Architect and the Owner and to the registered underground utility protection services and the owners of underground utility facilities shown on the Drawings and Specifications.

§ 3.20.2 The Contractor shall notify immediately the occupants of any premises near the Work and the Architect and the Owner as to any emergency that it may create or discover. The Contractor shall notify immediately the operator of any underground utilities and the Architect and Owner of any break or leak in the lines of such operator or any dent, gouge, groove, or other damage to such lines or to their rating or cathodic protection, made or discovered in the course of excavation.

§ 3.21 Records and Audits

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to review and audit the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project, and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Contractor shall preserve these for a period of four (4) years after final payment, or for such longer period as may be required by law.

The Contractor shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner's accountants in a location designated by the Owner at the time of the Owner's request. In the event that the Contractor's records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Contractor shall reimburse the Owner for its time, travel, and related expenses, and the Contractor shall reimburse the Owner the full amount of any discrepancies or overages.

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, Owner 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 the Owner's agreement with the Architect and will be an Owner's representative during construction until the date the Architect issues the final Certificate for ~~Payment. Payment and for such additional periods as the Owner and~~ Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents. Documents~~ and as authorized by the Owner.

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

§ 4.2.3 ~~On~~ If required in the Owner's agreement with the Architect, 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 -Facilitating Contract Administration

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. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors under contract directly with the Owner 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 that are 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 such~~ 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, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 ~~The~~ If required in the Owner's agreement with the Architect, 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 or~~, unless otherwise specifically stated by the Architect, 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 Bulletins, Change Orders,~~ and Construction Change Directives, and may ~~order authorize~~ 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;~~ 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 execute and distribute~~ 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~~ such Project representatives shall be consistent with these General Conditions.

§ 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. Copies of all Requests for Information shall be copied to the Owner by the Contractor at the time they are submitted to the Architect.

§ 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 as to the Contractor 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. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them and the Contractor establishes the Architect's delay in responding delayed the critical path of the Work. In its requests for information, the Contractor shall clearly identify the number of business days for the Architect to review and respond without any potential impact to the critical path or potential delay.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has ~~reasonable an~~ objection to a person or entity proposed by the Contractor, the Contractor shall propose within 10 days 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-objects to such substitute.~~ The Owner, through the Architect, may require the Contractor to change any Subcontractor previously approved and, except as provided hereafter, the Contract Sum shall be increased or decreased by the difference in cost resulting from such change. If the Contractor is in default because of the Subcontractor's performance, then the Contractor shall not be entitled to any adjustment in the Contract Sum and shall remain liable to the Owner for any damages or losses caused by such default.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

§ 6.1.2 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~~ coordinate the activities of the Owner’s own forces and of each Separate Contractor-Contractor, if any, with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and ~~mutual agreement, approval by Owner.~~ The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Contractor. However, the Date of Substantial Completion or Date of Final Completion shall only be changed or modified by written, executed Modifications to the Contract Time, as provided in the Contract Documents, regardless of the dates in the Construction Schedule.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify the Architect of report to the Architect~~ report to the Architect apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such 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 so report~~ 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 Work, except as to defects not then 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.~~ [Not Used.]

§ 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-Contractor, if any, shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner’s Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. The Architect’s decision allocating the cost shall be final and binding on the Contractor and the Owner.

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. To be valid, all changes involving an increase in the Contract Sum must have any required funding certificates attached to them.

§ 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.

§ 7.1.4 All such Changes in the Work shall be submitted with any required backup documentation to the Owner and Architect in writing in advance of performance of the Work and must be approved by the Owner in writing prior to commencement of 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 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3. Notwithstanding the method used to determine the adjustment to the Contract Sum, the Contractor must provide documentation to support any cost included in the request. Documentation may include invoices and time records related to the costs, but must be in a form acceptable to the Architect and Owner. Costs included in any Change Order request must be limited to those in Section 7.3.7, unless provided elsewhere in the Contract Documents or agreed to by the Owner and Architect.

§ 7.2.3 The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct, indirect, and cumulative costs associated with such change and any and all adjustments to the Contract Sum and Contract Time. The Contractor shall not proceed with any change in the Work without a signed Change Order, Construction Change Directive, or Minor Change in the Work notice. The Contractor's failure to timely seek and obtain such authorization as specified herein, shall constitute an irrevocable waiver by the Contractor of an adjustment to the Contract Sum or Contract Time for the related work.

§ 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~~ Subject to a not-to-exceed amount, a 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 7.3.4.7.3.7; or
- .5 Except where unit prices are applicable, that the Contractor agrees and represents to the Owner for the Owner's reliance that all Change Order or Change Directive pricing submitted by the Contractor shall

be based on the Contractor's actual costs or the Contractor's reasonable estimate of what would be its actual costs plus permitted overhead and profit.

§ 7.3.4 [Not Used.]

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data, present a true and accurate itemized accounting of all labor and material with appropriate supporting data. If the Architect prescribes a format for such accounting, the Contractor shall provide the accounting in such format. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4-7.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age, and unemployment insurance, applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance, and other employee costs approved by the Architect; Contractor pricing information shall include the number of hours and rate of pay for each classification of worker;
2. Costs of materials, materials (including any and all discounts, rebates, or related credits, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, minor equipment, simple scaffolds, etc. whether rented from the Contractor or others; others. Charges for certain non-owned heavy or specialized equipment may be invoiced at up to 100% of the documented rental cost. The Contractor shall submit copies of actual paid invoices to substantiate rental costs; Charges for certain Contractor-owned, heavy or specialized equipment may be invoiced at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance and weather delays should not be allowed;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and Work/change;
5. Costs-Additional reasonable costs of supervision and field office personnel directly attributable to the change; change; and

§ 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.
6 Total cumulative overhead and profit for all Subcontractors and Contractor

§ 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. **on any add or deduct Change Order shall not exceed 15% of the total cost of**

§ 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. **labor and material.**

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change order that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~. Architect plus the credit for overhead and profit. 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, or decrease 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.

§ 7.3.11 The Contractor shall not assign any portion of the Work to another contractor whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead and profit.

§ 7.3.12 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.

§ 7.3.13 The Contractor shall not be reimbursed for the following costs:

- .1 Employee Profit Sharing Plans regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed
- .2 Voluntary Employee Deductions (e.g., United Way Contributions, U.S. Savings Bonds, etc.)

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 8.1.3 ~~The date~~ 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 prematurely~~ commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

§ 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,~~ an Excusable Delay as set forth in Section 15.1.6.3, then subject to the agreement of the Owner, 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.~~ [Not Used.]

§ 9.2 Schedule of Values

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Within 10 days of the Effective Date, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, for the Architect's review and approval, allocating the entire Contract Sum to the various portions of the Work. The schedule of values Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, By submitting such Schedule of Values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's further approval. The Architect may from time to time require the Contractor to adjust such schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the Schedule of Values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor shall include a separate line item in its Schedule of Values for its Project Superintendent.~~

§ 9.2.1 The Contractor will identify in its Schedule of Values a line item entitled "As-Built Drawings and Record Documents." The Scheduled Value for this item will be one and one-half percent (1.5%) of the Contract Sum for contracts with a Contract Sum of \$1,000,000 or less, and one percent (1%) of the Contract Sum for contracts with a Contract Sum greater than \$1,000,000. When As-Built Drawings and Record Documents are received and reviewed by the Architect, and a letter is forwarded to the Owner affirming the completeness of these documents, these costs may be released. At the Owner's discretion, the costs dedicated to this Scheduled Value may be adjusted to reflect adjustments to the Contract Sum due to approved change orders. Unless specifically approved in writing by the

Owner, retained funds will not be released until As-Built Drawings and Record Drawings are received, reviewed, and deemed complete by the Architect.

§ 9.3 Applications for Payment

§ 9.3.1 At least ~~ten~~ three days before the date established in Section 9.3.1.3 for each progress payment, the Contractor shall submit to the ~~Architect an itemized~~ Owner and Architect a draft Application for Payment prepared in accordance with the ~~schedule of values,~~ Schedule of Values, if required under Section 9.2, for completed portions of the Work. The ~~application~~ draft Application for Payment shall be reviewed and adjusted, if necessary, by the Architect and returned to the Contractor. The Application for Payment, as reviewed and adjusted by the Architect, shall be notarized, if required, and ~~supported by all~~ be re-submitted with all the documentation required to be submitted with such Application for Payment, and any other supporting documentation required by the Contract Documents, Contractor's Payment Application Checklist, and by the Architect. The percentage completion of each portion of the Work shall be consistent with the then current Construction Schedule for the Project. The Application for Payment will be in the form and submitted with the number of copies and all related documents as required by the Contract Documents. The Contractor also shall submit with its Application for Payment and such other documents and/or data substantiating the Contractor's right to payment that ~~the Owner or Architect as Owner or Architect may require,~~ such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor shall also provide its monthly report detailing the Project's progress to date, projected progress for the next thirty (30) days and current project financial summary, including but not limited to:

- .1 The balance of any construction allowances and summary list of how the allowances have been expended to date.
- .2 A change order log showing any proposed, pending, and approved change order expenses to date.
- .3 Complete breakout showing the total completed and/or stored materials, labor, and equipment on the Project as of the date of the payment application, and anticipated schedule of payment applications detailing projections for the value of completed and/or stored materials, labor, and equipment, month by month, through the end of the Project.

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

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

§ 9.3.1.3 The Contractor shall submit its Application for Payment to the Architect on AIA Documents G-702 and G-703 and Certification or such other format as the Owner specifies, on or before the twenty-fifth (25th) day of each month for Work completed to that date. The Owner will issue payment to the Contractor within thirty (30) days from the date of its receipt of the certified Application for Payment from the Architect and in compliance with all of the Owner's policies, procedures, and documentation requirements.

§ 9.3.1.4 Beginning with the second Application for Payment, the Contractor will submit (a) a release and/or waiver of claims, including a waiver of all lien rights, in the form included in the Contract Documents or required by the Owner for itself and each of its Subcontractors and Suppliers, regardless of tier, for the work performed to date on the Project and for the value of the work performed during the current billing period (b) a complete list of its Subcontractors and Suppliers in the form included in the Contract Documents or as required by the Owner, and (c) a completed Application for Payment Checklist in the form required by the Owner. The Owner shall not have an obligation to pay the Contractor pursuant to an Application for Payment without the corresponding releases and/or waivers of claims and the complete list of the Contractor's Subcontractors and Suppliers. A final waiver of lien in the form included in the bid package, for the total value of each subcontract shall be included with the final Application for Payment for each subcontract and with the Contractor's final pay application for the Project. The total of the lien waivers shall match the total amount paid to the Contractor, inclusive of all approved change orders.

§ 9.3.1.5 Partial payments to the Contractor for labor performed shall be made at the rate of 92 percent of the amount invoiced through the Application for Payment that shows the total Contract completion at 50 percent or greater,

pursuant to Ohio Revised Code Section 153.12. For materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work partial payments to the Contractor shall be made at the rate of 92 percent of the amount invoiced, in accordance with the Ohio Revised Code. After the Contract is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price to the Contractor, no additional funds shall be retained from payments for labor. The Owner will withhold retainage from the amount set forth in the Application for Payment approved by the Architect, as provided in the Contract Documents.

§ 9.3.1.6 Documentation. Upon request, the Contractor immediately will supply the Owner and the Architect with such information as may be requested as to verify the amounts due to the Contractor, including but not limited to original invoices for materials and equipment and documents showing that the Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and Material Suppliers have been paid to them. The failure to provide such information shall be justification for withholding payment to the Contractor.

§ 9.3.1.7 Retainage or Other Escrow Account. Owner and Contractor acknowledge that R.C. 153.63 provides that retained and detained funds will be deposited into an escrow account governed by an escrow agreement with a third party escrow agent. If Contractor wishes to have funds so deposited, (1) Contractor must provide written notice to the Owner of the request for an escrow account prior to submission of the first pay application, (2) Contractor will be responsible for all expenses associated with the escrow agent and escrow account beyond the interest income from the account, which will be paid for out of the principal amount deposited into the escrow account, and (3) Contractor must enter into a mutually agreeable written escrow agreement with the Owner and the escrow agent. If the Contractor does not request an escrow account prior to the submission of the first pay application or, in the event Contractor does timely request an escrow account before submission of the first pay application, if Contractor cannot (or does not) agree to a mutually agreeable escrow agreement, the Contractor consents to the following: (a) Owner may deposit funds into a savings or checking account established by the Owner (which may also contain other funds); (b) Owner will not be serving in a fiduciary capacity while holding the funds; (c) Owner is not required to deposit the funds into a separate escrow account governed by an escrow agent; and (d) the foregoing satisfies the Owner's obligations under R.C. 153.63 as it pertains to both R.C. 153.12 (retained funds) and 1311.28 (detained funds).

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

§ 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, material suppliers, or other persons or entities ~~that making a claim by reason of having~~ provided labor, materials, and equipment relating to the Work. The Contractor agrees to bond off any lien filed on the real property on which the Project is located, the Owner's interest in such real property, and/or the remaining balance of the Contract Sum by providing a bond meeting the requirements of the Ohio Revised Code. The Contractor shall do so within sixty (60) days of the filing of the lien.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) properly completed Application for Payment and Contractor's Payment Application Checklist (if required) and Certification, the documentation described in the Contractor's Payment Application Checklist and Certification, and such other documents and/or data substantiating the Contractor's right to payment as the Owner or Architect may require, either 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 Contractor, for such amount as the Architect determines is properly due, and or notify the Contractor and Owner in writing 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 or in part 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, and that 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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; remedied or the Contractor is in default of the performance of any of its obligations under the Contract Documents including but not limited to: failure to provide sufficient skilled workers, failure to provide scheduling information as provided in Section 3.10.1, failure to prepare the Construction Schedule as provided in Section 3.10.1, failure to conform to the Construction Schedule, and/or failure to coordinate its Work with the work of other contractors, if any;
- .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; Documents; or
- .8 the Contractor is in default of the performance of any of its obligations under another contract it has with the Owner.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. [Not Used.]

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier material or equipment suppliers 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~~ Architect shall reflect such payment on its ~~next Application~~ the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall ~~make payment in the manner and within the time provided in the Contract Documents,~~ issue payment to the Contractor as set forth herein and shall so notify the Architect.

§ 9.6.2 The Contractor shall ~~pay each Subcontractor, no later than seven days after promptly, within the time period required by Ohio law, pay each Subcontractor upon~~ 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. Neither the Contractor nor its Subcontractors shall withhold retainage from its Subcontractors or their sub-subcontractors beyond the retainage withheld by the Owner from the Contractor.

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

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

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

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

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, Owner does not pay the Contractor the amount certified by the Architect within thirty (30) days after receipt of the certified Application for Payment for the Architect and the Owner has no other basis to withhold payment pursuant to the Contract Documents, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract

Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work ~~or designated portion thereof~~ is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy ~~or and~~ utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment..

§ 9.8.1.1 Date for Substantial Completion

The Date for Substantial Completion is the Date for Substantial Completion as set forth in the Owner-Contractor Agreement. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved, regardless of any dates in the Construction Schedule.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final ~~payment, payment together with all required documents neatly bound and indexed.~~ 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. When a specific manufacturer's warranty is required by the Specifications, the Contractor shall state in writing to the Architect that all the manufacturer's requirements for the issuance of the warranty has been completed and that the Work is ready for the Architect's and Owner's inspection. All manufacturer's warranties required for the Work shall commence as of the Date of Substantial Completion stated on the certificate issued by the Architect.

§ 9.8.3 Upon receipt of the Contractor's ~~list, list and the documents required by Section 3.12.11 neatly bound and indexed,~~ 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 Work, and the Work is Substantially Complete,~~ 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.

§ 9.8.3.1 Time for Completion of Items on List and Remedies. The Contractor shall complete all items on the list accompanying the Architect's Certificate of Substantial Completion by the Date of Final Completion set forth in the Owner-Contractor Agreement for the Project. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor. If the balance of the Contract Sum is insufficient, the Contractor will pay the Owner the balance on demand. The Contractor's warranties and obligations under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. If more than one inspection by the Architect for purposes of evaluating corrected Work is required, the Contractor shall pay the additional costs and expenses incurred by the Owner as a result of more than one inspection by the Architect, and the Owner may withhold from sums due or coming due the Contractor amounts to cover such additional costs and
~~§ expenses.~~

§ 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; ~~shall establish~~ responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and consistent with Section 9.8.3.1 shall 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~~ Upon receipt of the Certificate of Substantial Completion from the Architect and consent of the Contractor's surety if any, the Owner shall make payment of retainage applying to ~~the such~~ 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~~, Contractor and/or with the Architect's approval, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 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. In the event of a disagreement about such responsibilities, correction period, or commencement of warranties, the Architect will resolve the disagreement, and the Architect's decision will be final and binding. 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~~, Architect, which shall be final and binding.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for ~~Payment~~, Payment and a properly completed Contractor's Payment Application Checklist (if required), all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Architect, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, including all required documents submitted, 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.

§ 9.10.1.1 Final Completion Defined

Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Architect all documents required to be submitted to the Architect for final payment.

§ 9.10.1.2 Date for Final Completion

The Date for Final Completion is the Date for Final Completion as set forth in the Owner-Contractor Agreement. The Date for Final Completion shall only be changed or modified by Change Order, or other Modification, or a Claim that is Finally Resolved, regardless of any dates in the Construction Schedule.

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

designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

Unless otherwise provided in the Contract Documents, the final Application for Payment shall be itemized, and the Contractor shall ensure that the final Application for Payment transmitted to the Architect also is accompanied by the following additional documents, if not previously delivered to the Architect:

- .1 Evidence that all Completion/Punchlist items have been completed;
- .2 Where applicable, keys and keying schedule;
- .3 The documents, including as-built set of Drawings and Specifications, referred to in Section 3.3.4 in both hard copy and electronic file (in the format requested by the Owner) not otherwise required by the Contract Documents to be delivered earlier; and
- .4 Other documents required by the Contract Documents.

§ 9.10.3 If, after Substantial Completion of the Work, ~~final completion~~ Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting ~~final completion~~, Final Completion, and the Architect so confirms, the Owner shall, 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 or related to:

- .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~~ payment;
- or
- .5 **any claims, damages, losses, or expenses for indemnification under Section 3.18.1.**

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the ~~Contract~~ Contract, including compliance with OSHA and other state and federal regulations applicable to the Work. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, the Contractor shall comply with the Owner's rules, regulations, and policies.

§ 10.2 Safety and Health of Persons and Property

§ 10.2.1 The Contractor shall take all reasonable precautions for safety and health 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~~ thereby, including the Owner's employees, employees of other contractors, their subcontractors, material suppliers, and persons on the site or adjoining property;
- .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~~ Sub-

subcontractor and/or the Work of any other contractor and the materials and equipment to be incorporated in such Work; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein.

§ 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. The Contractor shall not bring any hazardous materials onto the Project site unless expressly required by the Contract Documents.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 10.2.1.3, except damage or loss 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. In the event of a dispute about who is responsible for damage and loss to such property, the issue shall be submitted to the Architect and the Architect's decision shall be final and binding on the respective parties.

§ 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 the Contractor suffers injury or damage to person or property because of an act or omission of the other party, Owner, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. If the Owner is legally responsible, the Contractor shall submit a Statement of Claim Form for such injury or damage as required by Section 15.1.

§ 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-report the condition to the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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, Documents upon written request, 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 such 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. Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the hazardous substance being rendered harmless; (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner.~~ 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. The term "rendered harmless" shall be interpreted to mean that exposure levels of asbestos and polychlorinated biphenyl (PCB) are less than any applicable exposure standards set forth in OSHA regulations.

§ 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.~~ [Not Used.]

§ 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 expressly required by the Contract Documents. Hazardous materials shall be identified by a Material Safety Data Sheet (MSDS). These MSDS's shall be submitted by the Contractor to the Owner prior to that material being used on the Project. 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~~ In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, the Contractor shall indemnify and reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~ [Not Used.]

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, without special instructions or authorization, 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. Nothing in this section will be construed as relieving Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning, and the close supervision of the Work as required under the Contract, could have been foreseen or prevented. Contractor will provide Owner a list of names and telephone numbers of the designated employees for each Subcontractor to be contacted in case of emergency during non-working hours. A copy of the list will also be displayed on the jobsite.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance and Bonds

§ 11.1.1 The Contractor shall purchase from and maintain in an insurance company or insurance companies approved by the Owner and licensed to do business in the State of the types Ohio such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

and limits. 1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed;

2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

of liability, containing. 3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

4 Claims for damages insured by usual personal injury liability coverage;

the endorsements. 5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

and subject. 7 Claims for bodily injury or property damage arising out of completed operations, which coverage shall be maintained for no less than five (5) years following final payment; and

to the terms. 8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

and conditions, as described in the Agreement or elsewhere in the Contract Documents. § 11.1.2 The insurance required by Section 11.1.1 shall include at least the specific coverages and be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be maintained without interruption from the Date of Commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.2.1 The minimum limits of liability for the required policies shall be not less than the following, unless a greater amount is required by law:

1 Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$ 1,000,000 each occurrence and \$ 2,000,000 aggregate. CGL shall include: (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal Injury, (ix) Stopgap liability; (x) per project aggregate endorsement; and (xi) an endorsement redefining "occurrence" to include property damage arising from the faulty workmanship performed by the Contractor or on the Contractors' behalf by Subcontractors.

2 Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident.

3 Workers' compensation with policy limits as established by Ohio law.

shall purchase and § 11.1.2.2 Such policies shall be supplemented by an umbrella policy in the amount of \$5,000,000 each occurrence and \$5,000,000 aggregate.

maintain the required insurance from an § 11.1.2.3 The Contractor shall maintain Pollution Liability insurance with a limit for any one incident of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000.

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 § 11.1.2.4 By requiring such insurance

and insurance limits herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the Owner.

§ 11.1.2.5 [Not Used.]

~~the Contract Documents.~~ **§ 11.1.2.6** Products and completed operations coverage shall commence with the certification of the final Certificate for Payment to the Contractor and extend for not less than the applicable Statute of Repose.

~~§ 11.1.2 The Contractor shall provide surety bonds.~~ **11.1.2.7** The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

~~of the types, for such penal sums,~~ **§ 11.1.2.8** All liability policies required in Section 11.1 shall include an additional insured endorsement naming the Owner and Architect, and any other individuals or entities identified in these General Conditions, all of whom shall be listed as additional insured, and include coverage for the respective officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured. The additional insured endorsement shall be ISO 20 10 11 85 or its equivalent so that Completed Operations liability extends to the additional insureds.

§ 11.1.2.9 All liability policies required in Section 11.1 shall be primary and non-contributory.

~~and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain~~ **§ 11.1.3** Certificates of insurance acceptable to the Owner, copies of endorsements, and other evidence of insurance requested by the Owner or any other additional insured, prior to commencement of the Work, shall be delivered to the Owner with copies to each additional insured identified in these General Conditions, when the Contractor delivers the executed counterparts of the Agreement to the Owner and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled, materially changed with respect to coverage for the Project, or allowed to expire until at least 30 days' prior written notice has been given to the Owner and Contractor and to each other additional insured identified in the General Conditions to whom a certificate of insurance has been issued. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Prior to commencing the Work, the Contractor shall provide the Owner with the specific additional insured endorsement that names the Owner as well as copies of the waiver of subrogation and primary and contributory endorsements.

~~the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~ **§ 11.1.3.1** Prior to commencing the Work, the Contractor shall furnish to the Owner, through the Architect, one copy of each of the Certificates of Insurance required herein. The Certificates of Insurance shall specifically set forth evidence of all coverage required by Section 11.1. The form of certificate shall be the form prescribed by the Owner, which shall be the ACORD Form 25 (2009/09 or more recent). The Contractor shall furnish to the Owner copies of any endorsement that is subsequently issued by amending coverage or limits.

~~§ 11.1.3 Upon the request of any person.~~ **11.1.4** In no event will any failure of the Owner to receive certified copies or certificates of policies required under Section 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

~~or entity appearing to be~~ **§ 11.1.5** If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under Section 11.1, the Owner may but shall not be obligated to, upon five (5)

days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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 **§ 11.1.6** When any required insurance, due to the attainment of a normal expiration date or renewal date expires, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to the Project separately.

§ 11.1.8 The Contractor shall require each of its Subcontractors to (i) procure insurance reasonably satisfactory to the Owner and (ii) name the Owner and Architect, and any of their employees and agents, as additional insured under the Subcontractor's CGL policy. The additional insured endorsement included on the Subcontractor's CGL policy shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insured have other insurance that is applicable to be furnished the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

§ 11.1.4-11.1.9 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 Liability Insurance

§ 11.2.1 The Owner-Owner, at the Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance.

§ 11.2.2 [Not Used.]

§ 11.2.3 [Not Used.]

§ 11.3 Property Insurance

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 **§ 11.3.1 Builder's Risk Insurance.** The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy for the Project in the amount of the initial Contract Sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Project.

insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. § 11.3.1.1 The builder's risk insurance obtained shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 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~~ § 11.3.1.1 If applicable, property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be on the site and the capital value of which is not included in the Work, nor shall such insurance cover any materials or equipment before these materials and equipment are physically incorporated into the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment. Any policy obtained by the Contractor under this Section 11.3 and related sections shall include a waiver of subrogation in accordance with the requirements of Section 11.3.8. If the Work is located in a Special Flood Hazard Area, as defined by the Federal Emergency Management Agency, the Contractor shall provide an endorsement to the property insurance policy that provides coverage for physical loss or damage caused by flood.

the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, § 11.3.1.2 When it is available, the party providing the builder's risk insurance shall provide to the other party with written proof of the builder's risk insurance upon written request.

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 § 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay such deductibles, however, that if the cause of any loss payment under such insurance or self-insurance is the fault of Contractor, the Contractor shall pay such deductible.

the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event § 11.3.1.4 The builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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 § 11.3.1.5 This property insurance must allow for partial utilization of the Work by the Owner and shall contain no partial occupancy restriction for the Project by the Owner. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurers providing the property insurance pursuant to Section 11.4 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurance company or companies providing property insurance shall consent to such partial occupancy or use by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any partial use or occupancy.

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 § 11.3.1.6 Damages to Other Property. The maintaining of such insurance as outlined in Section 11.1 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the Contract by the Contractor or its Subcontractors or others under its control or direction.

and damages attributable thereto. § 11.3.1.7 This property insurance must include testing and startup.

§ 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 11.3.2 Boiler and

Machinery Insurance. The Owner, at the Owner's option, may purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Work, and the Owner and Contractor and any other individuals or entities identified in the Contract Documents and the officers, directors, partners, employees, agents, and consultants of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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 **§ 11.3.3 Loss of Use Insurance** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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 **§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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 **§ 11.3.5** 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.8 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost **§ 11.3.6** The Owner shall maintain copies of the policies of insurance it is required to purchase and maintain hereunder at its offices and shall permit the Architect or the Contractor to inspect the policies during normal business hours and upon reasonable advance written notice.

of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. **§ 11.3.7** All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Section 11.3 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to the Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with these General Conditions.

§ 11.3-11.3.8 Waivers of Subrogation

§ 11.3.4 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, of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance and builder's risk insurance applicable to the Work, except such rights as they have to proceeds of such insurance. insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require similar written waivers require, by appropriate agreements, similar written waivers each 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 ~~if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them. The policies shall provide such waivers of subrogation by endorsement or otherwise. A 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) and whether or not the person or entity had an insurable interest in the damaged property.~~

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

~~§ 11.5.1-11.3.9~~ A loss insured under the Owner's property insurance required by the Agreement shall be adjusted by the Owner as fiduciary in good faith and made payable to the Owner as fiduciary in good faith 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 ~~11.3.10~~. The Contractor shall pay Subcontractors 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 Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. ~~11.3.10~~ The Owner in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within fifteen days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 15.3 and 15.4. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner in good faith shall make settlement with insurers, or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

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 **§ 11.3.11** If required in writing by a party in interest, the Owner in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4. Performance Bond and Payment Bond

Contractor shall execute a Change Order for reconstruction of the damaged **§ 11.4.1** The Contractor shall provide a contract bond to guaranty payment and performance of the Work, as required by Ohio law. When the Contractor delivers the executed counterparts of the Agreement to the Owner, the Contractor shall deliver such bond to the Owner, along with other documents as may be required.

or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement § 11.4.1.1. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet with the requirements of the Agreement or Ohio law, the Contractor shall promptly notify the Owner and the Architect and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of the Contract Documents and Ohio law.

or the allocation of the proceeds, § 11.4.2 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.

the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. § 11.4.3 Material Default or Termination. If the Owner notifies the Contractor's surety that the Contractor is in material default or terminates the Contract, the surety will promptly and within 21 days investigate the claimed material default or termination. If the Owner gives a notice of material default and then terminates the Contract, the surety shall complete its investigation within 21 days of the notice of material default. As part of such investigation, the surety shall visit the offices of the Contractor, Architect, and Owner to review the available project records.

If the surety proposes to take over the Work, the surety shall do so no later than the expiration of such 21 day period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Work, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor. The surety will provide the Owner with the results of its investigation, including any written report or documents. This Section 11.4.3 is in addition to the Owner's rights under Section 14.2.2 and is not intended to create any rights of the surety, including but not limited to the right to takeover the Contractor's obligations.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, such costs and the cost of correction, shall be at the Contractor's expense. ~~correction shall be at the Contractor's expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.~~

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

~~The~~ In addition to the rights and remedies under Section 2.5, the Contractor shall promptly correct Work rejected by the Architect or Owner for failing to conform to the requirements of the Contract Documents, ~~whether~~ discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

shall ~~correct it promptly after receipt of~~ begin to correct it within 2 business days after receipt of written notice from the Owner to do so, so and complete such correction within 30 days after receipt of such notice, 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~~ 30 days 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 does not limit any warranty period under these Contract Documents, 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. Any such acceptance shall be in writing and executed by a representative of the Owner who has been expressly authorized to do so.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall provide proper facilities at all times for inspections and tests of work by the Owner and other authorities having jurisdiction over the Project. The Contractor shall remove any water used in conducting such tests and inspections in a manner so as not to discharge the water on any portions of the Work or damage any portion of the Work. 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 (1) 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 the Agreement is executed, and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

~~so require.~~ § 13.4.1.1 If Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Architect the required certificates of inspection or approval. 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.

§ 13.4.1.2 The Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the Owner's and Architect's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the Owner and Architect. Tests required by the Contract Documents to be performed by the Contractor that require test certificates to be submitted to the Owner or Architect for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

1. "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories.
2. Basic requirements of ASTM E329, "Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials used in Construction" as applicable.
3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Institute of Standards and Technology or accepted values of natural physical constants.

§ 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. Neither the observations by the Owner or its designated representative, nor inspections, tests, or approvals by persons other than the Contractor, shall relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

§ 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 in duplicate to the Owner and the Architect.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at zero percent (0%).

§ 13.6 Time Limits on Claims. As between the Owner and Contractor, the statute of limitations shall commence as provided in current Ohio law.

legal rate prevailing from time to time at the place where the Project is located. **§ 13.7 Attorney-Client Confidential and Privileged Communications.** The Contractor acknowledges and agrees that the Owner's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the Architect. The Contractor agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be confidential work product.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30-90 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, Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing

portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors ~~for materials or labor 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~~ Documents, including but not limited to failure to maintain the Construction Schedule or failure to correct defective and/or non-conforming Work.

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

- .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.

As set forth in this section, the Owner's termination of the Contractor is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Document and at law, all of which shall survive termination.

§ 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 ~~costs or~~ damages incurred by the Owner and not expressly waived, including but not limited to the Owner's attorneys' and consultants' fees and expenses, arising out of or related to the termination, such excess shall be paid to the Contractor. If such ~~costs~~ costs, other costs, and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 ~~The~~ Upon three business days written notice to the Contractor and Architect, the Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~ Contractor shall be entitled to receive payment for Work properly executed.

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 Contractor's Claims must be initiated by submitting the Statement of Claim Form ("Claim Form") included with the Contract Documents to the Architect and the Owner, properly completed in accordance with the instructions accompanying the Form and submitted within the time period under Section 15.1.3.1. The responsibility to substantiate Claims shall rest with the party making the Claim. The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. "Knowingly" shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including the Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages, and fees and expenses. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2. Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with, and/or disrupt the Work of the Contractor, and such actions do not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these General Conditions. Pending final resolution of the Claim, the Contractor shall continue performance of the Work as provided in Section 15.1.4.~~

§ 15.1.2 [Not Used.]

§ 15.1.3 Notice of Claims

§ 15.1.3.1 ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and As a condition precedent to a change in the Contract Sum or the Contract Times, for each Claim the Contractor shall deliver a fully completed Statement of Claim Form, a copy of which form is a Contract Document, to the Initial Decision Maker with a copy sent to the Owner and the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence-Maker, within 10 days of the start of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~ the Claim. The

Contractor shall be responsible for substantiating its Claim. The Contractor's failure to deliver a fully completed Statement of Claim form shall be an irrevocable waiver of the Contractor's right to any form of additional compensation, be it in time or money, arising out of the Claim or the circumstances underlying the Claim. Further, the Contractor's obligation to deliver a fully completed Statement of Claim form within such 10 day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.4.2 [Not Used.]

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, ~~notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim.~~ the Contractor shall submit a Statement of Claim Form as required by Section 15.1.3.1. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~ Time following proper Notice of Delay as required under Section 3.10.3.1 of these General Conditions, the Contractor shall submit a Statement of Claim Form as required by Section 15.1.3.1.

§ 15.1.6.2 ~~If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented.~~ The Contractor is prevented from completing any part of the Work within the Contract Time due to weather conditions and the Contractor wants additional time to complete the Work, the Contractor shall initiate a Claim by submission of the Statement of Claim Form in accordance with Section 15.1.3.1. The Contractor's entitlement to additional time shall be evaluated and substantiated as provided in Section 15.1.6.2.1.

by data substantiating that **§ 15.1.6.2.1 Weather Delays.** When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

<u>Month</u>	<u>Number of Workdays Lost Due to Weather</u>
<u>January</u>	<u>8</u>
<u>February</u>	<u>8</u>
<u>March</u>	<u>7</u>
<u>April</u>	<u>6</u>
<u>May</u>	<u>5</u>
<u>June</u>	<u>4</u>
<u>July</u>	<u>4</u>
<u>August</u>	<u>4</u>
<u>September</u>	<u>5</u>

October	6
November	6
December	6

weather conditions were abnormal **§ 15.1.6.3 Excusable and Compensable Delays.** The delays for which the Contractor is entitled to additional time are “Excusable Delays.” The only Excusable Delays are delays which the Contractor establishes were: (a) caused by the Owner or those in privity of contract with the Owner, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, (d) work days lost due to weather conditions as provided under Section 15.1.6.2, (e) concealed or unknown conditions under Section 3.7.4, and (f) other unforeseeable delays beyond the control of the Contractor and its subcontractors and suppliers of any tier.

for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The delays for which the Contractor is entitled to additional time and money are “Compensable Delays.” The only Compensable Delays are Excusable Delays which the Contractor establishes were proximately caused by an improper action or failure to act by the Owner.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other waives Claims against the Owner 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~~, profit except anticipated profit arising directly from the Work.

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

§ 15.1.8 Settlement Offers. If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's last settlement offer, the Contractor shall be liable to the Owner and shall reimburse the Owner for all of the Owner's attorneys' fees and expenses, and arising out of or related to such Claim since the date of such last settlement offer.

§ 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, 11.3.9, and 11.3.10~~, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation of any Claim. If an initial decision has not been rendered within 30 days any further proceeding permitted under these General Conditions of~~ any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution ~~Maker~~ 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.

§ 15.2.2.1 Owner's Request for Documents. The Owner may request such documents and information from the Contractor as the Owner determines necessary to evaluate and comment upon the Claim. Upon receipt of such request from the Owner, the Contractor shall provide all requested documents and information within ten (10) days. Such documents and information may include but not be limited to the Contractor's Project accounting records, estimate for the Project, daily job logs, and other information from which the Contractor's Project costs may be derived. The Contractor shall provide the requested documents in the formats requested, which include both paper and electronic copies. If requested by the Owner, the electronic copies shall be provided in native computer language. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. The Contractor's provision of the requested documents to the Owner in the format requested by the Owner shall be a condition precedent to any further proceeding under the Contract Documents.

Failure to provide the requested documents shall be a material breach of the Contract, and the Contractor shall indemnify the Owner for all of the Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. If the Initial Decision Maker requests supporting data from a party and the party fails to provide it, the party thereafter shall be precluded from presenting such data in any subsequent dispute resolution proceedings, if the data was reasonably available to it at the time of the request.

§ 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; if both parties agreed in writing to mediate and, if mediation is not successful in resolving the matter or the parties do not agree to mediate, litigation in accordance with Section 15.4.1.

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

§ 15.2.6.1 ~~Either party may, If the Contractor does not request mediation of a written decision of the Initial Decision Maker, 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 then the Initial Decision Maker's decision becomes final and binding upon the Contractor. If the Initial Decision Maker renders a decision after litigation has been initiated, such decision may be entered as evidence, but shall not supersede the litigation proceedings unless the decision is acceptable to all parties concerned. Litigation shall be considered "initiated" upon either the service of the original complaint on the Owner or, if litigation relating to the Project has already been filed, when a motion for leave to amend the complaint to add the claim has been filed.~~

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings may, after initial decision by the Initial Decision Maker or 30 days after submission of the Claim to the Initial Decision Maker, be subject to mediation, pursuant to mediation procedures mutually agreed-upon by the Parties.

§ 15.3.2 [Not Used.]

§ 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. [Not Used.]

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

§ 15.4 Arbitration Litigation

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any 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 by mediation or any Claim that is not subject to mediation, shall be subject to litigation unless both parties mutually agree in writing to arbitrate the Claims. Venue for such litigation shall be exclusive in the state court of competent jurisdiction in the Court of Common Pleas, in the county in which the Project is located. The parties expressly waive the right to remove any litigation to federal court. Any Claim subject to, but not resolved by, mediation may be

§ 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 decided by arbitration if the parties mutually agree in writing. There shall be no mandatory arbitration of Claims.

§ 15.4.1.1 [Not Used.]

§ 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.[Not Used.]

§ 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.[Not Used.]

§ 15.4.4 Consolidation or Joinder -[This Section is deleted in its entirety.]

§ 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).[Not Used.]

§ 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.[Not Used.]

§ 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.[Not Used.]