

New Scoreboard Structure for:  
SMSD District Stadium, North Location  
Shawnee Mission School District

3-17582

**PROJECT:**

New Scoreboard Structure for:  
SMSD District Stadium, North Location  
Shawnee Mission School District

**ARCHITECT:** ACI Boland, Inc.  
1710 Wyandotte  
Kansas City, MO. 64108  
(816) 763-9600

**DATE:** February 9, 2018

**ADDENDUM NO. 2**

This addendum, applicable to work herein, shall be understood to be, and is, an Addendum and as such shall be a part of and included in the Contract. IT IS ESSENTIAL THAT ALL BIDDERS/ CONTRACTORS FURNISHING LABOR, MATERIAL, AND SERVICES IN CONNECTION WITH THE PROJECT READ EACH SECTION OF THIS ADDENDUM. Bids shall acknowledge receipt of and inclusion of all addenda items.

**General**

**2-1** Contents  
Addendum No. 2 includes the following sections:  
Addendum No. 2– Arch

**ATTACHMENTS**

A. Addendum No. 2 - Arch

**END OF ADDENDUM NO. 2**

## **ADDENDUM NO. 2 - Architectural**

This addendum, applicable to work herein, shall be understood to be, and is, an Addendum and as such shall be a part of and included in the Contract. IT IS ESSENTIAL THAT ALL BIDDERS/ CONTRACTORS FURNISHING LABOR, MATERIAL, AND SERVICES IN CONNECTION WITH THE PROJECT READ EACH SECTION OF THIS ADDENDUM. Bids shall acknowledge receipt of and inclusion of all addenda items.

### **General**

#### **2-A1     Pre-Bid Conference**

A pre-bid conference was held on Thursday, February 8, 2016 at 9:00 am  
Shawnee Mission North High School  
7401 Johnson Dr.  
Overland Park, KS 66202

-Refer to attached agenda and sign-in sheet.

### **Project Manual**

#### **2-A2     SECTION 00 00 09 INVITATION TO BID**

Replace Section 00 00 09 with attached section revising project Start Date to May 21, 2018.

#### **2-A3     SECTION 00 06 00 OWNER-CONTRACTOR CONSTRUCTION AGREEMENT**

Replace Section 00 06 00 with attached section revising project Start Date to May 21, 2018.

#### **2-A4     SECTION 00 60 30 AIA A201-2007 GENERAL CONDITIONS**

Replace AIA A201-2007 with attached section revising Paragraph 11.1.5, Limits of Insurance, Umbrella Liability to \$5,000,000.00.

#### **2-A5     SECTION 01 01 00 SUMMARY OF WORK**

Replace Section 01 01 00 with attached section revising project Start Date to May 21, 2018

**Drawings**

**2-A6     SHEET A1.1**

- a.     To GENERAL NOTES, replace note No. 2 with revised note as follows.**
- 2.     Where required by conduit routing (see Electrical), sawcut and replace any concrete to nearest joint in concrete walks. Match surface finish. In asphalt, sawcut and replace with matching asphalt base and surface course after conduit installation. Conduit routed through grass areas shall be backfilled and planted with sod after conduit installation.
- b.     To GENERAL NOTES, add the following notes:**
- 13.    As part of this project, the contractor shall remove and dispose cluster of (3) existing pine trees directly south of the existing scoreboard. Holes left by removal shall be filled with compacted /graded soil, and planted sod.
- 14.    The contractor can remove sections of the existing chain link fence if required for construction access, provided that any removed fencing is replaced immediately after access is no longer required. Replaced sections of fencing shall match existing adjacent fence.
- c.     To 3/A1.1 PARTIAL SITE PLAN, add the following notes:**
- Coordinate the exact location of the track timing and camera system with the Owner prior to installation of conduit and electrical boxes.
- The contractor shall include in their bid, the cost to have ATG-Ram Industries cut and reinstall the turf system around the new electrical equipment that is to be set within the turf field.

**END OF ADDENDUM NO. 2 - Architectural**



## **Pre Bid Conference Agenda**

New Scoreboard Structure for:  
SMSD District Stadium, North Location  
Shawnee Mission School District

ACI/BOLAND, INC. – KANSAS CITY  
1421 E 104<sup>th</sup> Street, Suite 100  
Kansas City, Missouri 64131  
T. 816.763.9600  
F. 816.763.9757

### **Bid #18-007**

ACI Project No. 3-17582

**Pre Bid Conference Date:** Thursday, February 8, 2018, 9:00 a.m.

**Project Bid Date:** Wednesday, February 14, 2018, 2:00 p.m.

**Bid Receipt Location:** Shawnee Mission School District Offices  
8200 W. 71<sup>st</sup> Street  
Overland Park, Kansas 66204  
Purchasing Office, Att: Mr. Everett Morgan

- 
1. Introduction of Participants.
  2. General Project Overview:

The Contractor shall furnish all labor, materials, facilities, insurance, management, equipment, services, employee training and testing, permits and agreements necessary to perform the work required for the new scoreboard structure at SMSD District Stadium, North Location.

3. Bid form is provided in the Project Manual.
4. Bids shall be held for sixty (60) days.
5. Bid Security- Each bid submitted shall have a bid bond equal to 5% of the bid. Bid Security will be returned to all bidders after the execution of the Contract with the successful bidder.
6. A Performance Bond, Labor/Material Bond and Kansas Statutory Bond are required for this project. The Surety Company shall be reviewed and approved by the Owner.
7. The Owner shall employ testing laboratory for quality control testing.
8. Sales Tax Exempt- This project is exempt from Sales Tax. Copies of the exemption certificate will be made available to the Contractor and the Owner.

9. City Codes- All work shall be completed in accordance with the currently adopted International Building Code (IBC), National Electrical Code and all applicable City of Overland Park, Kansas codes, ordinances, or adopted amendments.
10. Building Permit is required and shall be paid in full by the Contractor.
11. Construction schedule and liquidated damages as follows:

Start Date	Substantial Completion	Final Completion
May 17, 2018	July 27, 2018	August 10, 2018

Liquidated Damages are \$500/day beginning July 27, 2018 until completion.

Review requirements in Section 01 01 00

12. Review Cash Allowances in Specification Section 01 21 00 and paragraph 2.03 of the Construction Agreement.
13. Contractors may schedule a visit to the site through the School District.



New Scoreboard Structure for:  
SMSD District Stadium, North Location  
Shawnee Mission School District

3-17582

SECTION 00 00 09 - INVITATION TO BID

Addendum No.2

**Project:**

**New Scoreboard Structure for: SMSD District Stadium, North Location**

**Issue Date:** February 9, 2018

**Architect:** ACI/Boland Architects  
1710 Wyandotte St.  
Kansas City, MO 64108

**Owner:** Shawnee Mission School District  
7235 Antioch  
Shawnee Mission, KS 66204

**Pre-Bid Conference:** A Pre-Bid conference was held on Thursday February 8, at 9:00 a.m. The conference took place at Shawnee Mission North High School, 7401 Johnson Dr. Overland Park, Kansas.

**Bid Time/Date:** February 14, 2018, 2:00 p.m. (local time)

**Submit Bids to:** Shawnee Mission Public Schools  
Purchasing Department  
Attn: Mr. Everett Morgan  
8200 W. 71<sup>st</sup> St.  
Shawnee Mission, KS 66204

**Note:** A bid form is invalid if it has not been received by the time, date and at the location designated for receipt as specified in this Invitation to Bid. Faxed, e-mailed or telephone bid proposals shall not be accepted.

**Description of the Work:** The Work includes, but is not necessarily limited to the following:

**Shawnee Mission District Stadium, North Location  
7401 Johnson Dr.  
Overland Park, KS 66202**

The project consists of new Scoreboard structure, limited sitework, concrete, scoreboard erection, installation, and electrical.

**Time of Completion:** The Work shall be completed according to the following:

- *Start Date* May 21, 2018
- *Substantial Completion Date –Field (all work except as listed below)* July 27, 2018

Definitions of Substantial Completion, Final Completion and terms of Liquidated Damages are identified Section 01 01 00.

**Receipt of Bids:** Bid forms are to be received by the date and time at the location indicated in this Invitation to Bid. Any change in bid time or date will be by Addendum issued to bidders registered at the office of the Architect as having received full sets of bidding documents. Bid security in the amount of five percent (5%) of the Bid must accompany each Bid in accordance with the Instruction to Bidders.

**Bid Opening:** Bid forms will be publicly opened and tabulated in the Shawnee Mission Public Schools office at 8200 W. 71<sup>st</sup> St., Shawnee Mission, KS 66204 following receipt of bids at the time previously indicated. All interested parties are invited to attend. No award will be announced at that time.

**Procurement of Documents:** Bidders may obtain Bidding Documents by contacting.

Architectural Blueprint Company  
6500 W. 110<sup>th</sup> St.  
Suite 102  
Overland Park, KS  
Phone: 913-951-2000  
[www.archblueprint.com](http://www.archblueprint.com)

Each General Contractor may obtain one (1) CD of bidding documents (plans and specifications), provided by the District.

All Contractors and suppliers may purchase printed sets of bidding documents for a fee made payable to Architectural Blueprint Company.

**Examination of the Documents:** Bidding documents may be viewed on line at [www.archblueprint.com](http://www.archblueprint.com), in accordance with the Instructions to Bidders free of charge.

The bidders list will be available from Architectural Blueprint ONLY.

END OF SECTION



## **CONSTRUCTION AGREEMENT -Addendum No. 2**

This Agreement is by and between the Shawnee Mission Public Schools Unified School District (“Owner”) and \_\_\_\_\_ (“Contractor”). ACI Boland, Inc. (“Architect”) has been retained by Owner to serve as Architect on the project.

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties, in consideration of the mutual covenants agree as follows:

### **Article 1 – Work**

#### ***1.01 Description***

**The Work is generally described as follows: General construction for new Scoreboard structure, including sitework, concrete, structural steel fabrication, erection, installation of the scoreboard, and electrical as shown in the contract documents dated January 23, 2018.**

#### ***1.02 Scope***

Contractor shall complete all work specified in the Agreement Documents in Article 6.

### **Article 2 – Time**

#### ***2.01 Time of the Essence***

All time limits for milestones, substantial completion, and completion and readiness for final payment as stated in the Agreement Documents are of the essence of the Contract.

#### ***2.02 Dates for Substantial Completion and Final Payment***

The Work will commence no sooner than **May 21, 2018**

The Work will be substantially complete on or before **July 27, 2018**.

The Work will be complete and ready for final payment on or before **August 10, 2018**

#### ***2.03 Liquidated Damages***

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in

paragraph 2.02 above, plus any extensions thereof allowed under other terms of this Agreement. The parties also recognize the delays, expenses and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time.

B. Instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$500** for each day that expires after the time specified in paragraph 2.02 for substantial completion until the Work is substantially complete.

C. After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the contract time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$500** for each day that expires after the time specified in paragraph 2.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

## **Article 3 – Agreement Sum**

### ***3.01 Sum and payments***

Owner shall pay Contractor for completion of the Work under the Agreement Documents in current funds equal to the amounts determined under paragraph 4.02 below:

The Agreement Sum is \$\_\_\_\_\_.

The Agreement Sum includes the following alternates: (not applicable).

The Agreement Sum includes the following allowances: \$10,000 for unforeseen conditions.

The Agreement Sum is subject to adjustments under this Agreement.

## **Article 4 – Payment Procedures**

### ***4.01 Submittal and Processing of Payments***

The Contractor will submit applications for payment to the Architect for processing. With each application for payment, Contractor will also submit a Lien Waiver for the previous payments received.

### ***4.02 Progress Payments; Retainage***

Owner shall make progress payments for the Agreement price based on Contractor's

applications for payment and the Engineer's certificates for payment. Contractor must apply for payment on or before the 25<sup>th</sup> day of each month. Owner shall make progress payments certified by the Engineer within 30 days of submittal, except that if work is continuing, Owner may withhold up to 150 percent of the value of that portion of the retainage attributable to the ongoing work until 45 days after that work is complete. Prior to final completion, progress payments will be made for the Work completed less five percent retainage and less such amounts as Owner may dispute or withhold, including but not limited to liquidated damages.

#### ***4.03 Final Payment***

Upon final completion and acceptance of the Work by the Owner, Owner shall pay the remainder of the contract price.

### **Article 5 – Contractor's Representations**

#### ***5.01 Contractor makes the following representations***

- a. Contractor examined and carefully studied the Agreement Documents and any other related data identified in the bidding documents;
- b. Contractor visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress and performance of the Work;
- c. Contractor is familiar with and is satisfied on all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work;
- d. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performing the Work at the contract price, within the contract times, and under the other terms and conditions of the Agreement Documents;
- e. Contractor knows of the general nature of the Work to be performed by Owner and others at the site that relates to the Work as stated in the Agreement Documents;
- f. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Agreement Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Agreement Documents;
- g. The Agreement Documents convey understanding of all terms and conditions for performance and furnishing of the Work; and

- h. Contractor warrants and guarantees to Owner that all work will be in accordance with the Agreement Documents and will not be defective. Contractor's obligation to perform and complete the Work in accordance with the Agreement Documents shall be absolute.

## **Article 6 – Agreement Documents**

### ***6.01 Contents***

The Agreement Documents comprise the following documents in order of precedence:

1. Form DA-146a, Contractual Provisions Attachment;
2. Written Change Orders or Construction Change Directives issued after execution of this Agreement;
3. This Agreement;
4. Special Conditions;
5. General Conditions;
6. Project Manual, **dated January 23, 2018**
7. Addendum \_\_\_\_;
8. Kansas Statutory Bond (K.S.A. 60-1111);
9. Performance Bond;
10. Payment Bond;
11. Contractor's bid.

If any inconsistent or incompatible provisions arise between the Agreement Documents, the order of precedence shall be followed. The Agreement Documents may only be amended, modified or supplemented with the written agreement of the Owner and Contractor.

## **Article 7 – Bonds and Insurance**

### ***7.01 Performance, Payment and Statutory Bonds***

A. Contractor shall furnish a Statutory Bond as required under K.S.A. 60-1111 with good and sufficient sureties in a sum not less than the sum total in this Agreement, conditioned that such

contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with the Work. The Statutory Bond shall be filed with the clerk of the district court of Johnson County.

B. Contractor shall furnish a Performance Bond in an amount at least equal to the Agreement price as security for the faithful performance of all of Contractor's obligations under the Agreement Documents. These Bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period except as provided otherwise by laws or regulations or by the Agreement Documents.

### ***7.02 Certificates of Insurance***

A. Contractor shall deliver to Owner Certificates of Insurance (and other evidence of insurance requested by Owner or any other additional insured) this Agreement requires.

### ***7.03 Contractor's Liability Insurance***

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and also will provide protection from claims which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Agreement Documents, whether it is to be performed by Contractor, any Sub-Contractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable. Contractor's liability insurance must be for at least \$2,000,000 in coverage.

### ***7.04 Permits***

A. Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which apply at the time of opening of bids, or, if there are no bids, on the effective date of the Agreement.

## **Article 8 – Indemnification**

To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless Owner, and the board members, officers, directors, partners, employees, agents, consultants and Sub-Contractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals in all courts or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss or damage is

attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any act or omission of Contractor, any Sub-Contractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

## **Article 9 – Completion of the Work**

### ***9.01 Contractor's Construction Schedule***

A. Contractor, promptly after being awarded the Agreement, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work, and a schedule for the critical path for the construction of the Project. Contractor shall provide an updated schedule for construction every 60 days thereafter and anytime upon request of Owner or Architect.

### ***9.02 Delays***

A. If Owner or other contractors or utility owners performing other work for Owner, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Agreement Price or the Agreement Times, or both if a Claim is made therefore. Contractor's entitlement to an adjustment of the Agreement Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Agreement Times.

B. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal unforeseen weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Agreement Times if a Claim is made therefore, if such adjustment is essential to Contractor's ability to complete the Work within the Agreement Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph.

C. Owner shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or for any other project or anticipated project.

D. Contractor shall not be entitled to an adjustment in Agreement Price or Agreement Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed delays within the control of Contractor.

E. Contractor shall make written request, with supporting documentation, to Owner for a

requested adjustment in the Agreement Price or Agreement time as discussed in this Section. Failure to make said request within 10 days of the occurrence giving rise to the request constitutes a waiver of the claim for any adjustment.

### ***9.03 Correction or Removal of Defective Work***

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, 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 such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under this Paragraph, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee on the Work.

### ***9.04 Change Orders***

A. If modifications other than field changes are made in the plans or specifications related to the contract between the Contractor and the District, the District will be notified immediately of those modifications and the reasons for them. Field changes are defined as those minor modifications required to accommodate actual conditions that do not affect contract completion time or total contract cost. (Board Policy FEG.)

B. Changes in the Work may be accomplished after execution of this Agreement, and without invalidating the Agreement, by Change Order or Construction Change Directive.

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

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

The architect will approve no change order without prior authority of the district.

D. A Construction Change Directive is a written order prepared by the Engineer and signed

by the Owner and Architect directing a change in the Work and stating a proposed basis for adjustment in the Agreement Sum or Agreement Time, or both. The Owner may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement comprising additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

E. Upon receipt of a Change Order or Construction Change Directive, Contractor shall proceed promptly, unless otherwise notified, with the Work.

F. Contractor may submit a Request for Information to Architect for clarification of any portion of the Agreement Documents, including Change Orders or Construction Change Directives. Architect shall respond to all requests for information promptly.

#### ***9.05 Contractor's Warranty of Title***

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

B. Contractor makes the following warranties to the Owner:

1. Materials and equipment furnished under the Agreement will be new and of good quality unless otherwise required or permitted by the Agreement Documents;
2. The Work will be free from defects not inherent in the quality required or permitted; and
3. The Work will conform to the Agreement Documents.

#### ***9.06 Waiver of Claims***

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection, from failure to comply with the Agreement Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Agreement Documents; and
2. A waiver of all Claims by Contractor against Owner other than those previously made under the requirements of this Agreement and acknowledged by Owner



in writing as still unsettled.

## **Article 10 – Waiver of Consequential Damages**

A. Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Agreement to the extent allowed by law.

## **Article 11 – Substantial Completion and Final Completion**

### ***11.01 Substantial Completion***

A. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete under the Agreement Documents so the Owner can occupy or utilize the Work for its intended use.

B. When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement 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.

### ***11.02 Final Completion***

A. Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Agreement fully performed, the Owner will promptly issue a final Certificate for Payment.

B. Final payment shall not become due until 30 days after Contractor finally completes the Work, submits to the Owner all required documents including, but not limited to, releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Agreement, and the Owner issues a final Certificate for Payment.

## **Article 12 – Suspension and Termination**

### ***12.01 Owner May Suspend Work***

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not over 90 consecutive days by notice in writing to Contractor that will fix the date on which Work will be resumed.

B. Contractor shall resume the Work on the date so fixed.

C. Contractor shall be granted an adjustment in the Agreement Price or an extension of the Agreement Times, or both, directly attributable to any such suspension.

#### ***12.02 Owner May Terminate for Cause***

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's failure to perform the Work in accordance with the Agreement Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule as adjusted from time to time);
2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
3. Contractor's violation in any substantial way of any provisions of the Agreement Documents.

B. If one or more of the events identified in Paragraph 12.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
2. Incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
3. Complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 12.02.B, Contractor shall receive no further payment until the Work is completed. If the unpaid balance of the Agreement Price exceeds all claims, 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 12.02.B and 12.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within 30 days of receipt of the notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If Contractor has provided a performance bond under Paragraph 7.01, the termination procedures of that bond shall supersede Paragraphs 12.02.B, and 12.02.C.

### ***12.03 Owner May Terminate For Convenience***

A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for the following items without duplication of any items:

1. Completed and acceptable Work executed under the Agreement Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work; and
2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Agreement Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses.

B. Contractor shall not be paid for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

## **Article 13 – Dispute Resolution**

A. Owner and Contractor shall make a good faith effort to resolve all disputes with an informal meeting between representatives of both parties before resorting to other means of resolution.

B. Owner and Contractor may agree to participate in mediation or arbitration proceedings to resolve a dispute, but this Agreement requires neither proceeding.

C. Nothing in this paragraph shall limit the ability of Owner or Contractor to sue in a court of law regarding a dispute.

## **Article 14 – Representatives**

Owner's Representative: \_\_\_\_\_

8200 W. 71<sup>st</sup> St.  
Shawnee Mission, KS 66204  
(913) 993-8516

Contractor's Representative: \_\_\_\_\_

ADDRESS \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NUMBER \_\_\_\_\_

Architect:

ACI Boland, Inc.  
1710 Wyandotte  
Kansas City, MO 64108  
816 763-9600

## **Article 15 – Miscellaneous Provisions**

### ***15.01 Nondiscrimination in Employment***

Contractor will be required to comply with the President's Executive Order No. 11246, Title VI and Section 3 of the 1968 HUD Act as pertaining to Equal Employment Opportunity through Affirmative Action. Contractor must comply with all requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, national origin, age or disability.

### ***15.03 Taxes***

The Owner is a public entity exempt from payment of state sales taxes and will furnish the Contractor with all required information to allow Contractor to benefit from this status. The Contractor shall apply the exemption under state law for purchases required for the Work. The Contractor shall pay all other required sales, consumer, use and other similar taxes, if any. The Contractual Provisions Attachment controls any terms of this Agreement to the contrary.

#### ***15.04 Student Safety***

Contractor and its employees shall not interact with, contact, or otherwise access students on District premises without express approval by the District. District may require Contractor and its employees undergo criminal background checks before entering areas of the District premises occupied by students or before interacting with students. District reserves the right to exclude persons from its premises.

#### ***15.05 Giving Notice***

A. Whenever any provision of the Agreement Documents requires giving written notice, it will be deemed to have been validly given if:

1. Delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
2. Delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### ***15.06 Computation of Times***

When the Agreement Documents refer to any period of time by days, it will be computed to exclude the first and include the last day of such period except that if the last day is Saturday, Sunday, or day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### ***15.07 Cumulative Remedies***

The duties and obligations imposed by this Agreement and the rights and remedies available to the parties hereto are in addition to, and are not to be construed as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee, or by other provisions of the Agreement Documents. This Paragraph will be as effective as if repeated specifically in the Agreement Documents for each duty, obligation, right, and remedy to which they apply.

#### ***15.08 Survival of Obligations***

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Agreement Documents, and all continuing obligations stated in the Agreement Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement or termination of the services of Contractor.

### ***15.09 Controlling Law***

This Agreement is to be governed by the law of the State of Kansas.

### ***15.10 Venue***

Venue of any lawsuit filed regarding the Project or arising out of this Agreement will be in the Johnson County District Court in the 10th Judicial District of Kansas.

### ***15.11 Headings***

Article and paragraph headings are inserted for convenience only and do not constitute parts of this Agreement.

### ***15.12 Counterparts***

This Agreement may be executed in one or more counterparts that constitute one entire Contract when taken together and shall be fully executed when each party whose signature is required has signed at least one counterpart.

### ***15.13 Electronic Signatures***

For this Agreement, a signature page or other document signed and transmitted by fax, email, or similar electronic medium is to be treated as an original document.

### ***15.14 Assignment***

Neither party may assign their rights and obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

### ***15.15 Entire Agreement***

This Agreement constitutes the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter, and may not be changed, modified or amended, in whole or in part, except in writing signed by Owner and Contractor.

This Agreement will be effective as of \_\_\_\_\_, 20\_\_

**REMAINDER INTENTIONALLY BLANK**

IN WITNESS WHEREOF, Owner and Contractor sign this Agreement.

**Owner**

By

\_\_\_\_\_  
Board President

Attest

\_\_\_\_\_  
Board Secretary

**Contractor**

By

\_\_\_\_\_

\_\_\_\_\_  
Title

Attest

\_\_\_\_\_

\_\_\_\_\_  
Title



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

New Scoreboard Structure for  
SMSD District Stadium, North Location

### THE OWNER:

*(Name and address)*

Shawnee Mission U.S.D. No. 512  
8200 W. 71st St.  
Shawnee Mission, KS 66204

### THE ARCHITECT:

*(Name and address)*

ACI/Boland, Inc.  
1710 Wyandotte St.  
Kansas City, MO 64108

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) an Emergency Change Order Authorization or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents also include the bidding requirements (including: invitation to bid, Instructions to Bidders, bid form, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid and proposal, or portions of Addenda relating to bidding requirements. In addition, the Provisions found in Contractual Provision Attachment (Form DA-146a), which is hereto attached are hereby incorporated in this contract and made a part thereof.

#### **§ 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.

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the Architect identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

§ 1.2.2 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 Owner shall be deemed the author and owner of the Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. 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 this Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 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 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 this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## 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.

*(Paragraph deleted)*

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 The Owner shall furnish, where reasonably necessary, all surveys describing physical characteristics, legal descriptions, if requested and utility locations for the site of the Project, and a legal description of the site to the extent any such information exists. The Contractor shall be entitled to rely on the accuracy of information furnished by the

Owner but shall exercise proper precautions relate to the safe performance of the Work. However, Contractor shall immediately notify Owner and Architect, in writing, in the event Contractor observes any discrepancies in such information.

**§ 2.2.3** 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.

*(Paragraph deleted)*

**§ 2.2.5** 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.

### **§ 2.3 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. The rights stated in this provision are not a limitation of any rights of the Owner expressed in the Contract Documents or as provided in law or equity.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§ 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written 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 deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.4.2** Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Construction Schedule, the Owner may, upon three (3) days' written notice to Contractor, at Owner's option and without Contractor receiving any additional compensation therefor, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as Owner may deem necessary or desirable. In addition, Owner, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by Owner, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or Owner may make demand on Contractor for reimbursement of such costs.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

## **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

## **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. 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.

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

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

## **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Emergency Change Order Authorization.

§ 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. Use of profanity by Contractor or its employees, subcontractors, suppliers or other persons in the control of Contractor in the presence of School staff or students will not be tolerated. Smoking and excessively loud playing of audio equipment in occupied spaces will not be allowed. In addition, Contractor comply with the District Code of Conduct, as referenced in the Bid Documents.

§ 3.4.4 The Contractor shall endeavor to employ or use labor in connection with the Work in a manner that will minimize the likelihood of any strike, work stoppage, or other labor disturbance.

### § 3.5 WARRANTY

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

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, except such taxes as are saved by the use of the Owner's tax exemption.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons.

§ 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. The Contractor acknowledges and agrees that he may not incur costs that exceed the stated Allowance or expend any monies related to the Allowance without first seeking the written approval of the Owner and, where necessary, the approval of the Board of Education.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are 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. In connection with allowances stated in the Agreement or Contract Documents, the Contractor agrees that it may not incur or expend any monies in excess of the specified allowance amount(s), without express written approval issued in advance by Owner. Failure to obtain prior authorization from Owner shall be deemed a waiver of any claim by Contractor to increase the Contract Sum or seek additional compensation related to such increase in allowance amount(s).

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

### § 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, within seven (7) days after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within (7) days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, within ten (10) days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.10.4 In the event that the Owner determines that the performance of the Work has not progressed to the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite progress of construction. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the performance of such corrective measures for delays caused by the Contractor, subcontractors or materialmen.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed 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 an Emergency Change Order Authorization 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. If professional design services or certifications by a design professionals 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 cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review, and issue a response as follows: "approve" or "approve as noted", or "reject and request resubmission" 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.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Further, the Contractor shall use its best efforts to not disturb any occupancy or use of the building that is the subject of this Agreement or disturb any residences in the vicinity or operations of businesses adjacent to or near the site of the Work.

### § 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

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

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

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, including



attorney's fees, 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 a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

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

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

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

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

*(Paragraph deleted)*

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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**

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 shall be through the Owner.

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not 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 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, 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 and Emergency Change Order Authorizations, and may 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; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

**§ 4.2.11** 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.

**§ 4.2.12** The Architect's decisions on matters relating to aesthetic effect will be submitted to the Owner for final approval.

§ 4.2.13 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.

*(Paragraph deleted)*

## **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 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 or the bidding requirements, the Contractor, within three (3) calendar days after award of contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected without the written approval of the Owner. Such approval shall not be deemed to create a contractual relationship, third party beneficiary relationship between Owner and such subcontractor. Such relationship is denied by Owner.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these 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 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 sixty (60) calendar days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. 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 the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to 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, 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.

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; an Emergency Change Order Authorization 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, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Emergency Change Order Authorization or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

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

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

*(Paragraphs deleted)*

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.2.3.

§ 7.2.3 If the Contractor does not respond promptly or disagrees with the method for adjustment of the Contract Sum, the method for adjustment in the Contract Sum shall be recommended by the Architect to the Owner 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, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present in form such as the Architect, with the approval of the Owner, may prescribe an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.2.3 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales use or similar taxes related to the Work; and
- .5 additional costs of supervision and field officer personnel directly attributable to the change.

(Paragraph deleted)

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

### § 7.3 EMERGENCY CHANGE ORDER AUTHORIZATION

§ 7.3.1 In emergency situations, as determined by the Owner, the Superintendent of Schools, or the Deputy Superintendent for Operations has authority to issue an Emergency Change Order Authorization up to a maximum of Twenty Thousand Dollars and No/100 (\$20,000.00) per occurrence.

§ 7.3.2 An Emergency Change Order Authorization is a written order prepared and signed by the Superintendent of Schools or the Deputy Superintendent for Operations directing a change in the Work prior to formal approval by the Board of Education. The Owner may, by Emergency Change Order Authorization, and without invalidating this Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Contract Sum being adjusted accordingly.

§ 7.3.3 An Emergency Change Order Authorization may be used to expedite the approval of changes in the Work when the formal action of the Board of Education is not practical, or cannot be obtained in a timely fashion without impeding the progress of the Project. An Emergency Change Order Authorization may, at Owner's discretion, be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.4 An adjustment in Contract Price by the execution of an Emergency Change Order Authorization 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 price stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.2.3.

§ 7.3.5 Upon receipt of an approved Emergency Change Order Authorization, 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 Emergency Change Order Authorization for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner 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, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.4.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 Pending final determination of the total cost of an Emergency Change Order Authorization, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the

Architect will make an interim determination subject to Owner approval for purposes of monthly certification for payment for those costs. That 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 4.

**§ 7.3.8** When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

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

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

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

#### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor agrees to commence Work not later than fourteen (14) calendar days after the execution of a Contract with the Owner. The Owner will suffer financial loss if the Project is not substantially complete in the time set forth in the Contract Documents. The Contractor and his surety shall be liable for and shall pay to the Owner the sum stated in Paragraph 8.2.4 herein as fixed, agreed, and liquidated damages for each consecutive day (including weekends and holidays) of delay until the Work is substantially completed.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, 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. The Contractor shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed in accordance with those schedules as may be issued from time to time during the performance of the Work so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress, or completion if the whole or any part of the Work or other work for the Owner.

The Owner may, at its sole discretion, direct the Contractor to work overtime, and, if so directed, the Contractor shall work such overtime. Provided that the Contractor is not in default under any of the terms or provisions of this Contract the Owner will pay the Contractor for such actual additional wages paid, if any, at rates, which have been pre-approved by the Owner and Construction Manager.

**§ 8.2.4** Liquidated damages in the amount per calendar day as set forth in Section 010100 shall be assessed against the Contractor for failure to complete the Work. Assessment of such liquidated damages shall commence on the day after the date designated in the bid proposal for substantial completion. Time is of the essence of this Contract.

## **§ 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 an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may recommend and the Owner and Contractor may agree to...

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

*(Paragraph deleted)*

**§ 8.3.3** Unless a delay is caused, in whole or in part, by acts or omissions within the control of the Owner or persons acting on behalf thereof (other than the Contractor or persons acting on behalf of the Contractor), the only remedy available to the Contractor for delay shall be an extension of time. Unless a delay is caused, in whole or in part, by acts or omissions within the control of the Owner or persons acting on behalf thereof (other than the Contractor or persons acting on behalf of the Contractor), the Contractor agrees that, whether or not any delay shall be basis for an extension of time, the Contractor shall have no claim against the Owner or Architect/Engineer for:

- .1 and increase in the Contract Sum;
- .2 a payment or allowance of any kind for damage, loss or expense resulting from delays; or
- .3 any damage, loss or expense resulting from interruptions, accelerations, inefficiencies or suspensions of its Work.

**§ 8.3.4** Nothing herein shall be construed as granting an extension of time for delays, in whole or in part, by the Contractor or persons acting on behalf thereof.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, within ten (10) calendar days after award of contract, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item on AIA Document G702A, Application and Certificate for Payment Continuation Sheet. The Schedule of Values shall indicate a value for construction schedules and progress meeting notes that are required in the Contract Documents.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** The Contractor shall submit its Applications for Payment to Architect and Owner's Representative in accordance with the Accounts Payable Schedule as set forth in Section 010200 of the Project Manual. The Contractor shall submit to the Architect and Owner's Representative an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Emergency Change Order Authorization, 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.



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

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

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons 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 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. 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;
- .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 for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 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 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 Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payment to Contractor in accordance with the Payment Schedule in the Contract Documents. However, it is understood that, notwithstanding the schedule, the Owner shall make payment to the Contractor within 30 days after the Owner receives a timely, properly completed undisputed request for payment according to the terms of this Agreement, unless extenuating circumstances exist (if so, no later than 45 days) and in accordance with the Kansas Fairness in Public Construction Contract Act. Such payments are subject to the following conditions:

§ 9.6.1.1 Until substantial completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments.

§ 9.6.1.2 After substantial completion, and upon receipt of Application for Payment accompanied by consent of surety to reduction in or partial release of retainage executed in duplicate on AIA Document G707A, and upon certification, the Owner may, in its sole discretion, pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments, less two hundred percent (200%) of the value of items of the Work remaining to be done.

§ 9.6.1.3 The final five percent (5%) of the Contract Sum shall not be paid until the Contractor has submitted to the Owner all releases, waivers and other final documents required and satisfied all other Conditions Precedent identified in the General Conditions and Section 5.2 of the Standard Form of Agreement Between Owner and Contractor, A101-2007, as amended.

§ 9.6.1.4 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner or of other good and sufficient reasons, or its surety revokes its consent of reduction in or partial release of the retainage.

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor 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 and 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.

## **§ 9.7 FAILURE OF PAYMENT**

In the event that undisputed amounts are not paid by Owner to Contractor within 30 days after Owner receives a timely, properly completed undisputed request for payment, the Owner shall pay interest computed at the rate of 18% per annum on the undisputed amount, which shall begin to accrue on the day payment is due. Owner agrees that all obligations regarding payment are subject of the Kansas Fairness in Public Construction Contract Act, K.S.A. §16-1901, et seq. If the Owner does not pay the Contractor in accordance with the above referenced timetable, then the Contractor may, upon seven days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

## **§ 9.8 SUBSTANTIAL COMPLETION**

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

**§ 9.8.1.1** The Contractor shall carefully and regularly check his Work for conformance with the Contract Documents as the Work is being done. Unsatisfactory Work shall be corrected as the Work progresses and not be permitted to remain and become part of the Punch List. When the Contractor determines that the entire Work is ready for the Punch List inspection, it shall so notify the Architect for the Punch List inspection at the earliest possible date. Transmittal of the Punch List to the Contractor shall set the date for a reinspections prior to issuance of a Certificate of Substantial Completion. Upon receipt of the Punch List, the Contractor shall within seven (7) days bring to the attention of the Architect any questions that it may have concerning requirements of the Punch List.

**§ 9.8.1.2** When advised by the Contractor that all items on the Punch List have been completed and/or corrected, the Architect shall conduct a reinspection and shall be accompanied by the Contractor and any needed subcontractors to determine whether the Certificate of Substantial Completion can be issued. When issued, the Certificate of Substantial Completion shall state the date of commencement of the Warranty period (with any items to have a later starting date specifically noted). The Certificate shall also have attached to it the uncompleted Punch List items, and shall name the date for their completion. The Certificate of Substantial Completion shall also state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, insurance and building security. Acknowledgment of the Date of Substantial Completion by the signature of all parties on the Certificate implies possession of the premises by the Owner, and further completion of all incomplete Punch List items by the Contractor and the subcontractors at the Owner's convenience. The Owner shall cooperate in permitting the Contractor access to the Work for the completion of Punch List items.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to 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, 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. 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..

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or 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, including without limitation the requirements of laws and regulations that protect the environment and human health and safety. The Contractor and its subcontractors are solely responsible for complying with local, state and federal laws and regulations regarding the Work under construction at the site, including the current provisions of the Occupational Safety and Health Act of 1970 (29 CFR 1910 et seq.) and the Consumer Product Safety Act as it relates to building materials and construction. The Contractor shall submit the Contractor's safety program to the Architect and Owner.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; 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 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 owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, 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.

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

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

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect 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, 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 such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon notification by Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

*(Paragraphs deleted)*

§ 10.3.4 The Contractor hereby agrees and warrants that neither the Contractor, nor any of its employees, agents or subcontractors shall introduce any materials, supplies, or products in performing the Work which contain restricted or banned hazardous materials.

§ 10.3.5 Upon request of the Contractor, the Owner shall make available any inspections, reports, or studies in the Owner's possession relating to the presence of asbestos, if any, at the Work site.

§ 10.3.6 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for 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.

§ 10.3.7 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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.

§ 10.3.8 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 indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies approved by Owner and lawfully authorized to do business in the jurisdiction in which the Project is located 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:

- .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;
- .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;
- .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;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below. Coverages, shall be on an occurrence basis, except for worker's compensation, and shall be maintained without interruption from the date of commencement of the Work until the date of 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.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work 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 or allowed to expire until at least 30 days' prior written notice has been given to the Owner, Construction Manager or Program Manager (if applicable). 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.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an



additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 Limits of insurance provided by the Contractor pursuant to these General Conditions shall not be less than the following:

.1	Commercial Liability	\$2,000,000.00
.2	Automobile Liability	\$1,000,000.00
.3	Umbrella Liability	\$5,000,000.00
.4	Workers' Compensation	Statutory plus \$500,000.00 Employers Liability

## § 11.2 OWNER'S LIABILITY INSURANCE

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

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 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 form 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. Such property insurance shall be maintained 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 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance 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 Architect's and Contractor's services and expenses required as a result of such insured loss.

*(Paragraphs deleted)*

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 In the event of partial occupancy or use in accordance with Section 9.9, the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

*(Paragraphs deleted)*

## § 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.

*(Paragraph deleted)*

§ 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 11.3.7 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.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Owner.



### **§ 11.3.7 WAIVERS OF SUBROGATION**

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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. 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 even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** The Contractor shall pay the Owner and Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

*(Paragraphs deleted)*

### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND AND STATUTORY BOND**

**§ 11.4.1** The Contractor shall furnish Performance Bond, Labor and Material Payment Bond, and Statutory Bond in the amount of one hundred percent (100%) of Contract Sum at the time of execution of the Contract. Performance and Payment Bonds shall be executed by a surety company satisfactory to Owner in form of AIA A311.

**§ 11.4.1.1** Such Bonds, among other conditions, shall include payment for all materials used in Work and for all labor performed, whether by subcontractor or otherwise. Cost of Performance Bond and Payment Bond shall be included in the Contract Sum. Further, the Surety, by providing such Bonds, agrees to waive all notice to any change in the Work that would extend the Contract Time or increase Contract Sum and Surety agrees to increase the Penal Sum of the Bonds in the event of increases in the Contract Sum to this Agreement.

**§ 11.4.1.2** Said Bonds shall remain in full force and effect during term of any warranty required by specifications and any such longer term as required by Kansas law. Contractor shall keep bonding company informed of changes in amount of the Contract Sum and shall furnish Architect with copies of notices of such changes.

**§ 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.

## **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 or Owner 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, 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, such costs and the cost of 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 Contractor shall promptly correct Work rejected by the Architect or 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 an 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 written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This provision does not reduce or limit Contractor's obligation to perform Work in accordance with the Contract Documents nor does it reduce or limit any remedies available to Owner at law or in equity.

**§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

#### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the State of Kansas.

**§ 13.1.2** It is the Owner's intent to take advantage of its tax exemption status. Therefore, the Owner will furnish to the Contractor a tax exemption number issued by the State of Kansas for the construction of this Project. Where appropriate, sales tax shall not be included in the Contractor's proposal.

**§ 13.1.3** The Contractor agrees to abide by all federal requirements, including Equal Employment Opportunity (Article 15.1), the Clean Air Act, the Federal Water Pollution Control Act and such other federal, state or local laws applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection with same.

## **§ 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 such 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 such assignment.

## **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** 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.

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

## **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

**§ 13.5.5** 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.

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

### § 13.6 INTEREST

In the event that undisputed amounts are not paid by Owner to Contractor within 30 days after Owner receives a timely, properly completed undisputed request for payment, the Owner shall pay interest computed at the rate of 18% per annum on the undisputed amount, which shall begin to accrue on the eighth day after Architect receives an undisputed request for payment from Contractor. Owner agrees that all obligations regarding payment are subject of the Kansas Fairness in Public Construction Contract Act, K.S.A. §16-1901, et seq.

### § 13.7 TIME LIMITS ON CLAIMS

Claims by the Contractor must be initiated within twenty-one (21) days after occurrence of the event giving rise to such claim, otherwise, such claim shall be deemed waived. Claims must be made by written notice to the Owner with a copy to the Architect. The Owner shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the 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; or
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, following a seven-day written notice to cure to Owner .

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the 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,. Contractor shall have no right to anticipated overhead and profit on the work not completed and shall not be entitled to any consequential, indirect or incidental damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons 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 in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- .4 By issuing the bonds for the Project, the Surety acknowledges that the Bonds are subject to the requirements of this Agreement. Further, in the event Owner must terminate Contractor for cause, the Surety agrees to perform its obligations under the bonds with promptness so as to not delay the overall completion of the Project and the Surety shall take all necessary steps to bring the Project back on track.

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

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

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not 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, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question

between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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 for all non-disputed Work. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

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

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made in accordance with the requirements and limitations of Section 01010, in the Paragraph entitled "Time Extensions for Unusually Severe Weather."

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Architect 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 litigation 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 with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks

sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

§ 15.2.6 Either party may, within 30 days from the date of an initial decision, file suit in litigation.

*(Paragraph deleted)*

§ 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.

*(Paragraphs deleted)*

#### **ARTICLE 16 AFFIRMATIVE ACTION**

§ 16.1 Contractor shall comply with all federal, state and municipal statutes, rules, regulations and ordinances pertaining to hiring practices, affirmative action, and labor applicable to the jurisdiction of the Project.

§ 16.2 Exceptions to the above Equal Employment Opportunity conditions are contracts and subcontracts not exceeding ten thousand and no/100 dollars (\$10,000.00).

§ 16.3 Unless otherwise provided, the above Equal Employment Opportunity provisions are required to be inserted in all non-exempt subcontracts.

§ 16.4 Contractor may be required under Section 60-1.40 Title 41, C.F.R., to develop a written Affirmative Action Compliance Program if Contractor has fifty (50) or more employees. If Contractor is so required, it agrees to do so no later than one hundred twenty (120) days after the effective date of the Contract and to maintain such program until such time as it is no longer required by law or regulations.

§ 16.5 Contractor shall be bound by and agrees to the provisions of the Vietnam Era Veteran's Readjustment Act of 1974 and all regulations, rules and orders promulgated there under.

§ 16.6 Contractor shall be bound by and agrees to the provisions of Section 503 of the Rehabilitation Act of 1973 and all requirements, rules and orders promulgated there under.

**CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



SECTION 01 01 00 - SUMMARY OF WORK

Addendum No. 2

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Description of the Work.
- B. Work under other contracts.
- C. Products furnished by the owner.
- D. Contractor use of site (and premises).
- E. Code of Conduct.
- F. Existing conditions.
- G. Work sequence, Schedule for Completion and liquidated damages.
- H. Time extensions for adverse weather.
- I. Owner occupancy.
- J. Time extension for factors other than weather.
- K. Additional owner requested bid breakdown.

1.02 DESCRIPTION OF THE WORK

- A. The Contractor shall furnish all labor, materials, facilities, insurance, management, equipment, services, employee training and testing, permits and agreements necessary to perform the work required for the new scoreboard structure at SMSD District Stadium, North Location.

General construction for this bid will not require mobilization at multiple project sites. The bidder must perform the work in its entirety. Transferring or sharing prime responsibility for the work will not be allowed and will be considered cause for termination.

- B. The work includes, but is not necessarily limited to the following:
  - 1. General construction for new Scoreboard structure, including sitework, concrete, structural steel fabrication, erection, installation of the scoreboard, and electrical.
  - 2. All work to be completed for the SMSD District Stadium, North Location  
7401 Johnson Drive  
Overland Park, KS 66202
- C. The General or Prime Contractor shall be represented (full time) at the site, by a competent Superintendent from beginning of the work, until final completion unless otherwise approved by the Owner. The superintendent shall oversee and direct the daily construction activities at the work site including scheduling of workers and delivery of equipment and materials to meet the project schedule, and all activities of the construction. The superintendent shall also inspect work in progress to ensure that work

conforms to the plans and specifications. The Superintendent shall be dedicated to these duties and shall physically perform work or "wear tools" only on a limited basis.

- D. The Contractor shall "video" the peripheral areas to remain for reuse as in District Soccer Complex perimeter walks bleachers fences, etc., East perimeter grades and fencing/backstops, and all access routes as a verification of existing conditions, before starting the on-site construction work. Reference paragraph 1.08 of Section 01300.
- E. The Contractor is expected to protect all existing finishes including track surfacing, sidewalk and existing fencing to remain protection, access drives and adjacent grounds, by means and methods necessary in coordination with track manufacturers recommendations, good practice, and School District direction, at minimum, install to the extents as needed.
- F. The Contractor shall submit shop drawings and samples as early as possible to allow the adequate staging of materials and supplies, prior to commencement of on site work.
- G. Staging areas for each school shall be as agreed to with Owner for each school. The Contractor is encouraged to remove debris, demo material and trash from the closest exits, providing the gates/openings are protected from damage.
- H. The on site work is scheduled to be performed for:
  - 1. Scoreboard Structure, SMSD District Stadium, North Location
  - \* Final completion shall be achieved as noted after the established date of substantial completion, to include the issuance of the architect-engineer punch list to the general contractor for the affected building area.
- I. Work Sequence and Scheduling and Liquidated Damages
  - 1. The Contractor and all Subcontractors, sub-subcontractors and Suppliers shall furnish sufficient forces, supervision, construction plant and equipment, and shall work such hours as may be required to insure the prosecution of the work in accordance with the Progress Schedule stated herein. If in the opinion of the Owner, the Contractor falls behind the Progress Schedule, the Contractor shall take such steps as may be necessary to improve the progress and the Owner may require them to increase the number of shifts, and/or overtime operations, days of work including holidays, Saturdays and Sundays, all without additional costs to the Owner.
- J. Liquidated Damages
  - 1. Liquidated damages for substantial completion will be assessed if the general contractor has not achieved adequate progress to permit school district personnel occupancy and use of all noted areas of the site in accordance with the dates for substantial completion noted above. Damages will accrue and will be based on the unavailability of the practice and game/meet site for their intended purposes as determined by the school district. Liquidated damages noted are tiered and are based on the intended use of the site in accordance with the school schedules proposed or established.

**Construction  
Start Date**

May 21, 2018

**Substantial  
Completion**

July 27, 2018

**Final  
Completion**

August 10, 2018

**Liquid Damages Assessment**

\$0/day up to and including July 27, 2018  
\$500/day beginning August 10, 2018 until completion.

Refer to paragraph 2.03 of the Construction Agreement.

Final completion of construction related activities including the satisfactory completion of all punchlist corrections shall be completed in accordance with the timeframe noted above for each building and/or area. Liquidated damages associated with final completion shall be assessed based on any actual costs incurred by the school district due to the restricted use of the facility; and for costs that may be associated with inconvenience, lack of efficiency, and/or district personnel costs associated with providing exclusive access for the general contractor to complete punch list corrections after normal school day operation and/or on weekends or holidays. Similarly, any actual costs incurred by the school district for extended or additional architect/engineer services made necessary as a result of the general contractor's inability to meet final completion will be assessed as liquidated damages to the general contractor.

- K. School is scheduled to be in session at this time. There will be other SMSD staff limited activities in the building and onsite during the working period. The Contractor must cooperate and work with the SMSD staff.

**1.03 WORK UNDER OTHER CONTRACTS.**

- A. Items noted 'NIC' (Not in Contract), will be furnished and installed by owner or other separate contractors.
- B. Owner will remove and retain possession of items prior to start of building construction work and/or demolition activities at his discretion that he desires to retain from each area of work.
- C. Items to be furnished by Owner for final installation by General Contractor will be noted on the drawings (OFCI) Owner Furnished, Contractor Installed.
- D. The owner has paid No Dollars and No Cents, (\$00.00) for plan check fee for this project with the City of Overland Park, Kansas, and the Kansas Codes Administration. All other permits required remain the contractor's responsibility.
- E. Utility relocations and extensions will be performed by utility suppliers or their agents. The contractor is responsible for the scheduling, phasing, and coordination of all work performed by the respective utility suppliers or their agents. This includes, but is not limited to, work performed by:
1. Water District No. 1 of Johnson County
  2. Kansas City Power and Light
  3. Southwestern Bell (Telephone)

4. Time Warner Cable /Spectrum (Cable Television)

1.04 CONTRACTOR USE OF SITE AND PREMISES

- A. Project staging, parking of storage and office trailers shall occur as directed by Owner for each site.
- B. Limit use of site and premises to allow owner occupancy and normal summer break cleanup activity, building, parking lots, and hard play areas during construction.
- C. The contractor shall coordinate the use of the site and locations for all equipment storage, job trailers, portable lavatory facilities, generators, etc., with the architect and owner. The owner shall have the final approval for all site use by the contractor.

1.05 CONTRACTOR AND VENDOR EMPLOYEES CODE OF CONDUCT

- A. Shawnee Mission School District requests that all contractor and vendor employees conduct themselves in an acceptable manner while performing work on school district property. The following items are prohibited on school district property:
  - 1. No physical or verbal contact is to be made with students or non-designated staff.
  - 2. No smoking or other use of tobacco products in any manner is permitted on district property.
  - 3. No drugs and/or alcohol are to be consumed or present on district sites.
  - 4. No firearms, or hunting items, are to be present on the site.
  - 5. Foul and/or abrasive language is not to be used.
  - 6. All workers are to wear clothing on all parts of their body; no shirtless workers. Apparel should be appropriate to a school campus.
- B. Utilize designated areas for vehicle access and parking, material storage, etc.
- C. All workers are to wear a nametag, which identifies the company name and the individual's name.

1.06 EXISTING CONDITIONS

- A. The contract drawings are based on information taken from original construction drawings, site surveys and from inspections of the site.
- B. Bidders are advised that "as-built" conditions may vary from those shown on the drawings. Bidders shall not later request, nor expect to receive, additional payment for work related to variations which can be determined by examination of the existing building and site, by the date set for receipt of Bids for this Contract.

1.07 TIME EXTENSIONS FOR ADVERSE WEATHER

- A. The Contractor shall comply with all provisions of the General Conditions in submitting any request for extension of Contract Time due to unusually severe weather.
- B. Definitions:
  - 1. Adverse Weather - atmospheric conditions at a definite time and place which are unfavorable to construction activities.
  - 2. Unusually Severe Weather - weather which is more severe than the adverse weather anticipated for the season, location, or activity involved.

- C. In order for any request of time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions.
1. The weather experienced at the project site during the Contract period is more severe than the adverse weather anticipated for the project location during any given month.
  2. The unusually severe weather actually caused a delay to the scheduled progress and/or completion of the project. The delay must be beyond the control and without fault or negligence by the Contractor.
- D. The following schedule of monthly anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather-affected activities:

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS  
BASED ON FIVE (5) DAY (Monday – Friday) WORK WEEK

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
10	8	7	6	7	7	5	5	5	4	5	9

- E. Upon receipt of the Notice to Proceed, and continuing throughout the contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50% or more of contractor's scheduled work day.
- F. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full work days.
1. If the number of actual adverse weather delay days in a given month exceeds the number of days anticipated in Paragraph D, above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added upon approval by the Architect and Owner to the contract time.
  2. The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- G. Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated in Paragraph D, above, the difference shall be multiplied by 7/5 to convert any work day increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
1. The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed as a result of unusually favorable weather.

- H. In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- I. The contractor shall summarize and report all actual adverse weather delay days for the preceding month to the architect by the tenth (10<sup>th</sup>) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
  - 1. Any request or claim for an extension of time due to unusually severe weather shall be submitted to the architect and owner within twenty-one (21) days of the last day of the month in which the delay occurred. Resolution of any weather delay claim shall follow the procedures established by the general conditions and as prescribed above.
- J. The contractor shall include and indicate the monthly anticipated adverse weather days, listed in Paragraph D, above, in their progress schedule. (Reference Section 1300 for Progress Schedule requirements.)
  - 1. The contractor shall indicate the actual adverse weather days (whether less or more than the anticipated days) in their monthly progress schedule update.

#### 1.08 OWNER OCCUPANCY

- A. The existing building, parking lots and hard play areas will be used and occupied by the Shawnee Mission School District during portions of the Contract Time. Occupants will include, but not be limited to: students, faculty, parents, and other groups so authorized to use the building and/or site by the school district.
- B. School will be generally in session from 7:40 a.m. to 3:45 p.m., Mondays through Fridays, spring and fall semesters, throughout the contract time. In addition, the hours from 7:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 4:00 p.m., Monday through Friday, will be reserved for arrival and departure of the school district occupants. Delivery of materials and equipment is to be scheduled outside of these hours. The school is unoccupied for summer recess and will be available for contractor access.
- C. The work shall be confined to limited areas of the sites. Each Contractor shall work with the Project Team to develop a schedule of areas to receive work. The schedule will identify specific areas of the site to receive work at specific times. This schedule shall be submitted by the General Contractor to the Architect for approval before the work begins.
- D. It is desired that all the Contractors will work in multiple sites, simultaneously and completing the work in an orderly fashion.
- E. Unless otherwise indicated, the owner will move loose furnishings out of the Contractors way with SMSD work forces prior to scheduled demolition. This will include benches, portable goals, hurdles, small sheds, equipment, and other materials prohibiting work.

#### 1.09 TIME EXTENSION FOR FACTORS OTHER THAN WEATHER

- A. If the contractor incurs a delay due to factors out of his control, the contractor shall submit a claim within fourteen (14) days after the occurrence of the delay to the architect and project team. The claim shall include a description of the cause of the delay and resultant request for additional time.

- B. If a proposal request for additional work causes the contractor additional time to perform the original contract requirements the contractor may submit a claim for additional time to the Architect and Owner. The Contractor shall include in his proposal the request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- C. The determination that delays have occurred beyond the Contractor's control does not automatically mean an extension of time will be granted. The Contractor must substantiate the delay by indicating suspended work activities on the critical portion of the project schedule.

END OF SECTION